RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक १३] गुरुवार ते बुधवार, जून ५-११, २०१४/ज्येष्ठ १५-२१, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

उद्योग, ऊर्जा व कामगार विभाग

मादाम कामा रोड, हुतात्मा राजगुरू चौक, मंत्रालय,
मुंबई ४०० ०३२, दिनांक २१ मे २०१४.

अधिसूचना

कामगार राज्य विमा अधिनियम, १९४८.

क्रमांक ईएसआय. २०१३/प्र.क्र. ३०५/काम-३.— कामगार राज्य विमा अधिनियम, १९४८ (१९४८ चा ३४) च्या कलम ८७ व कलम ९१-अे अन्वये प्रदान करण्यात आलेल्या अधिकारांचा वापर करून, महाराष्ट्र शासन याद्वारे, जवाहर शेतकरी सहकारी सूतगिरणी मर्या., धुळे या आस्थापनेस दिनांक २१ मे २०१४ पासून दिनांक २० मे २०१५ पर्यंत एक वर्षाच्या कालावधीसाठी उक्त अधिनियमाच्या अंमलबजावणीतून सूट देत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

रविकुमार पाटणकर,
कक्ष अधिकारी.

In pursuance of clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. ESI.2013/CR-305/Lab-3, dated the 21st May 2014 is published in the *Maharashtra Government Gazette,* Part I-L, under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

D. S. RAJPUT,
Joint Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032, dated the 21st May 2014.

NOTIFICATION

EMPLOYEES' STATE INSURANCE ACT, 1948.

No. ESI. 2013/CR-305/Lab-3.–In exercise of the powers conferred under section 87 read with section 87 and 91-A of the Employees' State Insurance Act, 1948 (34 of 1948), and at all other powers enabling in that behalf the Government of Maharashtra hereby exempts M/s. Jawahar Shetkari Sahkari Soot Girni, Ltd., Dhule from implementation of the provisions of the said Act for the period of One year from the date of issue *i.e.* 21st May 2014 to 20th May 2015.

By order and in the name of the Governor of Maharashtra,

RAVEEKUMAR PATANKAR,
Desk Officer.

उद्योग, ऊर्जा व कामगार विभाग

मादाम कामा रोड, हुतात्मा राजगुरू चौक, मंत्रालय,
मुंबई ४०० ०३२, दिनांक २८ मे २०१४.

अधिसूचना

कामगार राज्य विमा अधिनियम, १९४८.

क्रमांक इएसआय. २०१३/प्र.क्र. २/कामगार-३.— कामगार राज्य विमा अधिनियम, १९४८ (१९४८ चा ३४) च्या कलम ८७ व कलम ९१-अे अन्वये प्रदान करण्यात आलेल्या अधिकारांचा वापर करून, महाराष्ट्र शासन याद्वारे, महाराष्ट्र स्टेट को-ऑप. कन्झुमर फेडरेशन मर्यादित, मुंबई या आस्थापनेस दिनांक २८ मे २०१४ पासून दिनांक २७ मे २०१५ पर्यंत एक वर्षाच्या कालावधीसाठी उक्त अधिनियमाच्या अंमलबजावणीतून सूट देत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

सु. सा. चौधरी,
शासनाचे अवर सचिव.

In pursuance of clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. ESI.2013/CR-2/Lab-3, dated the 28th May 2014 is published in the *Maharashtra Government Gazette*, Part I-L, under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

D. S. RAJPUT,
Joint Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032, dated the 28th May 2014.

NOTIFICATION

EMPLOYEES' STATE INSURANCE ACT, 1948.

No. ESI. 2013/CR-2/Lab-3.–In exercise of the powers conferred under section 87 read with section 87 and 91-A of the Employees' State Insurance Act, 1948 (34 of 1948), and at all other powers enabling in that behalf the Government of Maharashtra hereby exempts M/s. Maharashtra State Co-operative Consumers' Federation Ltd., Mumbai from implementation of the provisions of the said Act for the period of One year from the date of issue *i.e.* 28th May 2014 to 27th May 2015.

By order and in the name of the Governor of Maharashtra,

S. S. CHOUDHARI,
Under Secretary to Government.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

COMPLAINT (ULP) No. 229 of 1996.—Janardan Kallappa Kamble, R/o. Building No. 1, Flat No. G-3, Sitaramnagar, Ambedkar Road, Sangli.—*Complainant.*—*Versus*—Maharashtra State Electricity Board, Plot No. G-9, Prakashgad, Bandra (East), Bombay-51. (through its Superintendenting Engineer, Circle Office, Vishrambag, Sangli).—*Respondent.*

In the matter of Complaint u/s. 28(1) read with items 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri R. G. Rane, Advocate for the Respondent;

Shri K. D. Shinde, Advocate for the Complainant.

Judgment

This is a complaint purported to be under section 28(*1*) read with items 9 and 10 of Sch. IV of the M. R. T. U. & P. U. L. P. Act, 1971.

2. Admittedly, the Complainant jointed the Respondent Maharashtra State Electricity Board (hereinafter referred to as the Board) as a Lower Division Clerk on 24th February 1967. He was then promoted as Upper Division Clerk (Accounts) in the year 1978. The Board issued "General Order No. 74" (hereinafter referred to as G. O. 74), extending special benefits to all of its employees who have remained on a given post for 10 years or more without advantage of higher post or higher grade for want of clear vacancies. As per such orders, an employee who has completed service of 10 years and cannot be promoted to higher post or grade for want of clear vacancies, shall be entitled to the pay-scale of higher post, Such benefits is to be extended to him irrespective of the fact whether suitable vacancies in the next higher post is available or not.

3. It is also an admitted position that previously such benefit was available on completion of 10 years but such period was reduced to 6 years by correction slip dated 6th May 1983. Previously, such employee was entitled to pay scale of higher post or higher post or higher grade provided he is otherwise fit for the promotion on the basis of overall performance. A correction was made to such qualification by slip dated 1st January 1976. The correction slip says that a competent selection committee shall be competent to decide the cases.

4. Board's Circular dated 19th April 1984 provides that as 'G. O. 74' benefit is to be granted from retrospective date, confidential Reports of 3 years prior to the date of eligibility may be pursued. The G. O. 74 benefit is made available for two times. Firstly on completion of 6 years and secondly on completion of 9 years from the date of first benefit.

5. The Complainant was accorded first 'G. O. 74' benefit by order dated 1st December, 1986 with retrospective effect from 24th October 1984 and was permitted to draw salary of the Assistant Accountant from that date. It has also come on the record that the Complainant applied for second G. O. 74 benefit on 2nd December 1993. The Board then informed him by letter dated 20th January 1996 that Competent Selection Committee found him to ineligible for getting second G. O. 74 benefit till 31st March 1994.

6. It is case of the Complainant that he was getting salary of the post of Assistant Accountant from 24th October 1964, by virtue of 'G. O. 74' benefit. He applied for second 'G. O. 74' benefit but the benefit was refused by Board's letter dated 20th January 1996. It is alleged that said letter no-where contains reasons for denial of second G. O. 74 benefit and is not speaking one. He is deprived of the legal benefits for no reasons and Board's such action is arbitrary and illegal. According to him, therefore, refusal to pay second G. O. 74 benefit is an unfair labour practice. Finally, he has prayed for requisite declaration of an unfair labour practice, direction to pay second G. O. 74 with effect from 24th October 1993 and other consequential benefits.

7. The Board filed its written statement at Exh. C-3 contending that a Competent Selection Committee was appointed to consider the cases for grant of 'G. O. 74' benefit. It considered Confidential Reports of the Complainant in its meeting dated 12th October 1995, found the Complainant not upto the desired standard and then rejected his claim for getting G. O. 74 benefits. In fact, it found the Complainant to be ineligible, even upon the review for receipt of G. O. 74, till 31st March 1995. Accordingly, it was informed to the Complainant by letter dated 20th January 1996. It is further case of the Board that post of Divisional Accountant carries higher Responsibilities. A person working as Divisional Accountant must possess an ability to control the entire accounts. The Complainant was not found upto the standed for promoting him to the post of Divisional Accountant. On the contrary, his performance was average one and hence the Committee did not find him fit to get second G. O. 74 benefits. Thus, the Board justified its action and prayed for dismissal of the complaint.

8. Considering rival pleadings, following issues arise for my determination :—

(*i*) Does the Complainant prove that refusal of the Board to grant second' G. O. 74' to him is arbitrary, without application of mind and an unfair labour practice under item 9 of Sch. IV of the M. R. T. U. & P. U. L. P. Act, 1971.

(*ii*) What order ?

9. My findings, on above issues are as under :—

(*i*) No.

(*ii*) The complaint is dismissed.

Reasons

10. The Complainant produced Board's letter dated 20th January 1996 whereby he was communicated that Competent Selection Committee found him unfit for 'G. O. 74' benefit till 31st March 1994 with list Exh. U-5. This letter is not disputed by either parties. None of the parties led oral evidence.

11. Shri Shinde, learned Advocate representing the Complainant vehementaly argued that letter sent to the Complainant is simply a communication of refusal to but does not contain reasons thereof. It was obligatory for the Board to disclose as to why and how the Complainant was found to be unfit. Fitness for promotion covers all those eligible to compete for the higher post. The Complainant was eligible to compete for the post of Divisional Accountant and thus was entitled to G. O. 74 benefit. In support of his arguments, he relied on the decision in *Dinkar Sandashiv Sane* V/s. *M. S. E. B.* reported *in 1991-I-CLR-at page 401.* I must state at this stage itself that Shri Rane, learned Advocate representing the Board pointed out that observation in Sane's decision (referred supra) regarding ambit of G. O. 74 benefits are set aside by Division Bench and decision thereof is reported in *1993-I-C.L.R. at page 865 (M. S. E. B.* V/s. *Dinkar Sadashiv Sane).* Eventually, Advocate, Shri Shinde fairly conceded that he is not relying upon observations in original decision.

12. Advocate, Shri Rane replied that the Complainant has come with a case of automatic entitlement to G. O. 74 benefit on completion of 9 years. However, such is not the scope and ambit of G. O. 74 benefit. The employee who is granted G. O. 74 benefit has to give an undertaking that the shall not refuse physical promotion involving transfer as and when higher post become vacant. The Board started constituting a Competent Selection Committee to bring more transperancy and remove impression of bias. The Committee does not consists of Board employees but is of other competent persons. Element of objectivity is introduced. Otherwise, fitness for promotion is necessary and G. O. 74 benefit cannot be automatic. Past Confidential Reports of three years are perused by the Committee to have transperancy and then decision is taken. The Committee found the Complainant misfit for the benefit. In future, the Complainant could be promoted as Divisional Accountant and it is a post of more responsibility. It is not the case of the Complainant that his Confidential Reports are excellent but even then is not given G. O. 74 benefit. He further canvassed that scope of judicial review in the matters of promotion

is limited and the Courts have no jurisdiction to enter into assessment of merits by the Competent Selection Committee. For that end, he relied on the decision of Hon'ble Apex Court in *State of M. P.* V/s. *Shrikant Chaphekar reported in 1993 II LLJ at page 662 and Amir Singh* V/s. *Union of India reported in 2002 Lab. I. C. at page 2192.*

13. There is substantial merit in arguments of Advocate, Shri. Rane. It is specifically observed by Division Bench of Bombay High Court in *M. S. E. B.* V/s. *Dinkar Sadashiv Sane reported* in *1993-I-CLR- at page 865, as under :—*

> "In case the employee is guilty of any charge or the Confidential Reports of such employee indicates that he is misfit for the promotion or the employee has not passed necessary examination, then in such case, the employee cannot demand higher grade as a matter of right."

14. Scope ambit of 'G. O. 74' benefit is made crystal clear in above decision. Consequently, it has to be held that the Complainant cannot claim G. O. 74 benefit automatically and as of right on completion of 9 years.

15. Hon'ble apex Court in *Amirik Singh* V/s. *Union of India (referred above),* has made crystal clear that Judicial review is permissible only to the extent of finding whether process in reaching decision has been observed correctly and not the decision as such. Admittedly, Complainant's case was scrutinised by the Competent Committee and he was found to be unfit. It is not his case that his Confidential Reports are excellant. His main contention is entitlement to G. O. 74 benefit on completion of 9 years tenure *i. e.* automatic one. His such plea is answered in decision by the Division Bench of Hon'ble High Court, Bombay (referred *supra*). In my humble opinion, it is not necessary to repeat those observations in this judgment. Suffice to say that decision of Division Bench non-suits the Complainant.

16. Even otherwise, decision of Competent Selection Committee cannot be a matter of Judicial Review, as per devision in Amrik Singh's case (referred *supra*). The Committee has scrutinised Complainant's case thoroughly and found him to be unfit.

17. In the background of above discussions, I hold that the Complainant has failed to prove that refusal of the Board to grant G. O. 74 benefit is an unfair labour practice. Accordingly, I answer Point No. 1 in the negative and pass following order.

Order

(*i*) The complaint is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 2nd November 2002.

V. D. PARDESHI
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

REVISION APPLICATION (ULP) No. 60 of 1998.—Bhupesh Sidu Pattankode, C/o. Leslee Joseph Sequera, Kurne Building, Station Road, Miraj, Dist. Sangli.—*Petitioner.*—*Versus*—Dr. V. G. Sarpotdar, Sanjeevani Clinic, Opp. Balwantrao Maratha, High School, Shivajinagar, Miraj, Dist. Sangli.—*Respondent.*

In the matter of Revision u/s. 44 of the M. R. T. U. & P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri S. N. Inamdar, Advocate for the Petitioner;

Shri M. D. Wagh, Advocate for the Respondent.

Judgment

This is a Revision by original Complainant challenging legality of judgment and order passed in Complaint (ULP) No. 46/85, by Labour Court, Sangli, whereby relief of reinstatement with continuity of service and full back wages, is refused by dismissing his complaint.

2. Admittedly, present Petitioner (hereinafter referred to as the Complainant) was in employment of present Respondent (hereinafter referred to as the Hospital) as a Ward-boy. He then learnt some work of Lab-Assistant. He was retrenched by the Hospital by notice dated 28th February 1985 with effect from same date. It has also come on the record that Bhartiya Mazdoor Sangh submitted demands by letter dated 12th December 1984 to the Hospital for and on behalf of all employees of the Hospital and then gave notice of strike on 18th January 1985.

3. It is case of the Complainant that he was in employment of the Hospital as Lab. Technician from the year 1974 and was active member of Vaidyakiya Sramik Sangh, which is affiliated to Bhartiya Mazdoor Sangh. Demands raised by Bhartiya Mazdoor Sangh were admitted in conciliation. It is alleged that he united all employees of the Hospital and used to attend meetings of above Union on behalf of all employees of the Hospital. Thus, he represented all the employees in meetings of the Union. It is alleged that his services were terminated on the ground that he is active member of the Union and takes leading part in activities of the Union. Besides, three employees who are junior to him are retained while terminating his services. In fact, the Hospital ought to have retrenched the junior employees if really there were excess employees. Besides, he is terminated to terrorise other employees, and to stop their union activities.

4. On above averments, the Complainant alleged that the Hospital has engaged into unfair labour practice under item 1 of Sch. IV of the M. R. T. U. & P. U. L. P. Act. He then prayed for requisite declaration of an unfair labour practice, direction to reinstate him with continuity of service full back wages and other consequential reliefs.

5. The Complainant also filed an application (Exh. U-2) under section 30(*2*) of the M. R. T. U. & P. U. L. P. Act for interim temporary reinstatement by temporarily withdrawing order dated 19th February 1985, pending the hearing and final disposal of main complaint.

6. Original Respondent Hospital filed its say *cum* written statement at Exh. 13 and traversed all material allegations made by the Complainant. It contended that alleged demands raised by the Union were never pending in conciliation when the Complainant was dischared. It does not know as to whether the Complainant is an active member of the Union. It denied alleged union-activities of the Complainant.

7. It is case of the Hospital that the Complainant was in employment from the year 1975 as a Ward-boy, at the first instance. The Complainant learnt some work of Lab. Assistant but was not academically qualified to hold said post. One Kripadah Holkar who is qualified Lab-Technician was employed in January, 1985. The Complainant was not qualified Lab. Technician and hence was required to be terminated. Besides, the Complainant was required to be terminated for some serious confidential reasions. But the Hospital does not wish to disclose the same.

In fact, Complainant's services were terminated under provisions of Standing Orders by way of discharge simpiciter. Demands of the Union were never admitted in conciliation. Allegations that the Complainant is discharged on account of his alleged union activities are false. Miss. John and Mr. Holkar are qualified Lab-Technicians while Mr. Kokale is a Lab-Assistant. No new employee is employed on the post category to which the Complainant belongs. Thus, the hospital justified its action and prayed for dismissal of interim application as well as the complaint.

8. It was come on the record that one Shri. Sequera filed Complaint (ULP) No. 60/85 before the Labour Court, Sangli against the Hospital. Present complaint and complaint of Shri. Sequera were allowed by common judgment and order dated 21st January 1994. Hospital challenged the same *vide* Revision Application (ULP) No. 31/1994 before this Court which came to be allowed on 12th March 1996 and both complaints were remanded to the Labour Court with some directions.

9. After remand, the Labour Court framed issue at Exh. 42 and the parties went to the trial. The Complainant then again examined himself at Exh. 33 and placed reliance on documentary evidence. Dr. Sarpotdar examined himself at Exh. 35 on behalf of the Hospital. He too relied upon documentary evidence.

10. Learned Labour Court on perusal of evidence and hearing both parties held that no conciliation proceedings were pending before the conciliation Officer when the Complainant was retrenched and hence provisions of Section 33(1) and (2) of I. D. Act. are not contravened. It then held that the Complainant has not come with a case of less payment of retrenchment compensation but has come with a case that no reason for retrenchment is given. It then observed that no juniors are retained, there is no breach of Sec. 25 G of the I. D. Act. It is for the employer to use his best judgment and discretion and hence reasons given in the retrenchment notice that services of the Complainant are no longer required, cannot he held to be *malafide* one. Ultimately, it held that no unfair labour practice is proved by the Complainant and dismissed the complaint. *vide* judgment and order dated 22nd January 1998. The same is challenged in this Revision.

11. Complainant's Advocate filed written arguments (Exh. U-7), whereas, Respondent's at Exh. C-4. In addition, both made oral submissions. Considering rival submissions, following points arise for my determination :—

(*i*) whether impugned decision dismissing the complaint warrants interferance?

(*ii*) What order ?

12. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is dismissed.

Reasons

This being a Revision under section 44 of the M. R. T. U. & P. U. L. P. Act, It is not necessary to scruitinise rival contentions meticulously. The only material question is as to whether documents on record are incapable of supporting impugned order ? In other words, whether impugned decision is perverse or justifiable ?

14. It is one of the contentions of the Complainant that Bhartiya Mazdoor Sangh submitted a Charter of Demands to the Hospital by letter dated 12th December 1984, whereby an industirial dispute was raised and conciliation proceeding thereof were pending before the Conciliation Officer. Eventually, Hospital's action is contrary to provisions of Section 33(1) and (2) of the I. D. Act and is an unfair labour practice.

15. The Complainant has simply produced strike notice dated 18th January 1995 of Bhartiya Mazdoor Sangh, which contains reference to Charter of Demand dated 12th December 1984. There is nothing on record to show that the Conciliation Officer admitted the disputs in conciliation declaring his intention to commence conciliation proceedings. Intimations, if any given by him of his intention to commence upon conciliation proceedings are not produced on record. I, therefore, find that learned labour Court was well justified in holding that provisions of Section 33(1) and (2) of the I. D. Act are not contravened while terminating/retrenching the Complainant.

16. Shri Inamdar, learned Advocate representing the Complainant vehementaly argued that no reason for retrenchment is stated in the termination order, reason as stated that Complainant's services are no longer required cannot be a reason as contemplated under section 25F of the I. D. Act. Learned Labour Court, initially observed in impugned judgment (page 7) that retrenchment notice "indicating the reasons for retrenchment" but then scratched such portion. There was no difficulty for the Hospital to say in the retrenchment notice that now no work can be provided to the Complainant. Thus, termination of the Complainant at the whims of the Hospital is an unfair labour practice.

17. Shri. Wagh, learned Advocate representing the Hospital replied that peculiar facts and circumstances of this case are material. The Complainant was a Ward-boy and no another ward-boy is appointed. Lab-Technician opted to work as Lab-Assistant and hence the Complainant became surplus. Categories of Lab. Technicians, Lab-Assistants and Ward-boys are different. If another Ward-boy would have been appointed, then one can say that reasons for retrenchment is unjustifiable. In fact, reason is to be indicated and there is no need of full-fledged explanation/ reason in the retrechment order. The Complainant had no technical knowledge about analysing urine, blood etc. Dr. Sarpotdar has clearly deposed that well qualified candidates were available. The Complainant had no requisite qualification and thus became a surplus.

18. Learned Labour Court has relied upon observations of Rajastan High Court in *Vikas Bundkar* V/s. *Rajastan Handloom Development Corporation Ltd. reported in 1996 II CLR at page 182* regarding freedom and discretion of the employer. It is observed that rule under section 25 G of the I. D. Act is not immutable and certain amount of freedom to use his best judgment and discretion in the absence of allegations of *mala fide* cannot be held as arbitrary. The Complainant has mainly come with a case of termination for no reason and due to his union-activities. He has replied in the cross-examination that there was no any personal grudge of the Respondent against him but there might be grudge as he is working the union. He has also replied in the cross-examination that he has not appeared for the examination of Lab-Assistant to acquire requisite qualification to work as Lab-Assistant and has no technical knowledge of analysing blood, urine etc. It is not his case that other employees working as Lab-Technicians and Lab-Assistants have no requisite qualification to work on those posts. Thus, it has to be accepted that he was mainly appointed as a Ward-boy and doing some incidental work of Lab-Technician. No new Ward-boy is appointed. Other appointments are not appointments in the category of Ward-boy. In such circumstances, I find that learned Labour Court has rightly held that reason for termination/retrenchment is well justifiable.

19. Advocate Shri. Inamdar then tried to canvas that retrenchment compensation offered to the Complainant is less and thus there is violation of provisions of section 25 F of the I. D. Act on this ground alone. Eventually, it is an unfair labour practice but the labour Court did not appreciate such fact and recorded a perverse finding that such is not the case of the Complainant.

20. Advocate Shri. Wagh, countered above arguments and replied that there is no pleading nor it is whispered in the complaint regarding payments inadequate or less compensation. Such plea was not pressed even when issues were framed by the Labour Court. Jurisdiction under section 44 of the M. R. T. U. & P. U. L. P. Act is limited one and no new grounds based on facts can be raised in the Revision Application. The Complainant is altogether silent on this point even in his examination-in-chief itself. As such, additional ground directly raised in the Revision

Application was never directly or substantially an issue before the labour Court. It has come on the record that retrenchment compensation was offered to the Complainant but he refused to accept the same. The Complainant has challenged retrenchment order dated 28th February 1985 and thus implies acceptance thereof. The Complainant refused to accept the compensation and hence it was sent by cheque, which is also encashed by the Complainant.

21. I must state at the outset that scope of jurisdiction of Industrial Court under section 44 of the M. R. T. U. & P. U. L. P. Act is very narrow and re-appreciation or re-assessment of evidence is not permitted unless the Labour Court exceeds its jurisdiction or its findings are pervers. It is nowhere pleaded, either expressly or implidely in the complaint regarding in-adequate payment of retrenchment compensation. I therefore, find that learned Labour Court has rightly held that such is not the case of the Complainant. Besides, no issue to that effect was framed by the labour Court and the Complainant never complained that issue of less payment of retrechment compensation should be framed. As such, I do not find that observations of learned Labour Court that the Complainant has not come with a case of less payment of retrenchment compensation, are perverse. I, must add justification of impugned decision on the facts brought before him, is the material controvercy in this revision and this Court while exercising revision jurisdiction, cannot act as an Appellate Court. I, therefore hold that additional ground based on facts cannot be entertained in Revision Application.

22. Now, turning to non-compliance of Section 25 G of the I. D. Act, I found Shri. Saloman Pokale, Miss. John and Shri. Holkar are appointed on other posts and not on the post of the Complainant. They are appointed in other categories and on different posts. Eventually, it cannot be accepted that provisions of Section 25 G of the I. D. Act are violated while terminating/ retrenching the Complainant.

23. In the background of above discussions, I found that learned Labour Court was well justified in dismissing the complaint. Impugned decision no where smells of perversity or arbitrariness. On the contrary, there is every substance in its reasoning. No cass is made out to warrant Revisional interference. Accordingly, I answer Point No. 1 in the negative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 2nd November 2002.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

APPLICATION (MRTU) No. 5 of 2002.—Shri Sidhivinayak Hospital Karmachari Sanghatana, C/o. Sidhivinayak Ganapati Cancer Hospital, Sangli Miraj Road, Miraj.—*Applicant. Union.—Versus*—The Executive Director, Shri Sidhivinayak Ganapati Cancer Hospital, Sangli Miraj Road, Miraj.—*Non-Applicant.*

In the matter of Application for registration as recognised union U/s. 11 and Rule 4 of the M.R.T.U. & P.U.L.P. Act, 1971.

Coram.— Shri C. A. Jadhav, Member.

Appearances.— Shri A. K. Kumbhar, Advocate for the Applicant.

Shri H. G. Bhokare, Advocate for the Non-Applicant.

Judgment

This is an application under section 11of the M.R.T.U. & P.U.L.P. Act for grant of recognition to the Applicant Union for non-Applicant Company.

2. It is case of the Applicant Union that it is registered under the Indian Trade Unions Act on 28th July 2000. Its officer bearers are elected on 10th June 2000 consisting of President, Vice President, General Secretary, Treasurer, Secretary and 5 members. There are 71 employees of non-Applicant Company and 65 out of them were its members for the period of 6 calender months immediately preceding the month in which this application is made. A meeting of Excutive Committee took place, wherein it was resolved to apply for grant of recognition for the undertaking of non-applicant company. Lastly, it has contended that the Union has not instigated, aided or assisted the commencement or continuation of a strike among employees in the undertaking which is deemed to be illegal under the M.R.T.U. & P.U.L.P. Act, within six months immediately preceding the date of this application.

3. Shri Gosavi-Assistant to Executive Director of Non-Applicant Company filed his Affidavit at Exh. C-3 affirming that he displayed notice of this Court on the notice board of the Company on 29th August 2002 by translating the same in Marathi and Hindi languages understood by majority of the workmen.

4. The Executive Director of the Non-Applicant Company filed reply at Exh. C-1 contending that the Applicant Union is registered under the Trade Unions Act and is representing workmen of his Company. He accepted that the employees named in the list annexed to the Application are working in his Company. He further contended that he is unaware of any other information regarding meeting, membership fees etc. Finally, he has given no objection for grant of recognition.

5. There was no material on record regarding payment of membership fees and receipts thereof. I, therefore, directed Assistant Registrar of this Court to investigate into the regarding compliance of certain conditions and submit report. Accordingly, he submitted report (Exh. O-1). It says that 72/71 employees were working in the undertaking of the non-Applicant Company during the period from January, 2002 to June, 2002 and 59 employees out of them are members of the Applicant Union. Assistant Registrar has also verify receipt-books, membership register and payment of monthly subscription. It is further reported that the Applicant Union has maintained proceeding book of its meeting and balance-sheet is produced on record.

6. The Applicant Union has produced copies of its Registration Certificate, Bye-laws, proceeding book and the Balance-sheet. Considering averments in the main application and the report (Exh. O-1) of the Assistant Registrar, it is clear that more than 30% of the employees of non-Applicant Company are members of the Applicant Union for the period of 6 calender months, immediately preceding the month of presentation of this Application. Likewise, all obligation under section 19 of the Act are complied with. Various documents produced on record establish that the legal requirements are complies. The Non-Applicant Company has no objection to grant recognition. I, therefore, hold that the Applicant Union is entitled to recognition.

7. In the result, I pass following order :—

Order

(*i*) The Application is allowed.

(*ii*) It is declared that the Applicant Union is recognised under section 12 of the M.R.T.U. and P.U.L.P. Act for undertaking of Shri Sydhivinayak Ganapati Cancer Hospital, Miraj–Non-Applicant Company.

(*iii*) Necessary Recognition certificate be issued in the name of Shri Sydhivinayak Hospital Karmachari Sanghatana–the Applicant Union.

(*iv*) Parties to bear their won costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 9th October 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 133 OF 1993.—Shri Bhaskar Sahadeo Kamble, At Post : Karnal, Tal. Miraj, Dist. Sangli.—*Petitioner*—*Versus*—Karnal Vividha Kayrakari Sahakari (Vikas) Seva Sanstha Ltd., Karnal, Tal. Miraj, Dist. Sangli.—*Respondent.*

In the matter of revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Appearances.— Petitioner and his Advocate absent.

Shri S. Y. Yadav, Advocate for the Respondent.

Judgement

(Dictated on 24th October 2002 in Open Court)

This is a Revision by original Complainant challenging legality of judgment and order passed in Complaint (ULP) No. 292 of 1992, whereby, relief of continuity in service and back wages is refused by directing his reinstatement only.

2. Admittedly, Present petitioner cherain after referal to as the Complainant filed above complaint against present Respondent (hereinafter referred to as the Vikas Society) alleging unfair labour practice under items 1(a), (b), (c), (d) and (f) of Sch. IV of the M.R.T.U. and P.U.L.P. Act, *inter alia,* contending that he was working as a Salesman with the Vikas Society from the year 1980, was not allowed to join since the year 1986 and is orally terminated since then. The Vikas Society appeared through Advocate but failed to file its written statement and then the complaint proceeded without its written statement. Learned Labour Court then observed that delay of 6 years, does not entitle the Complainant to claim back wages or continuity of service and then allowed the complaint partly directing his reinstatement only, *vide* judgment and order dated 26th February 1993. Impugned decision to the extent of refusal of back wages and continuity of service, is challenged in this Revision.

3. I must state that the Complainant and his Advocate are absent since many dates. Thus, it appears that they are not bonafidely interested in prosecuting this Revision Application. However, my learned Predecessor has admitted the Revision Application. In such circumstances, I find it proper to proceed on my own on merits. It will be incorrect to dismiss the Revision Petition for default.

4. Now, following points, arise for my determination :—

(*i*) Whether impugned decision refusing to grant continuity of service and back wages, is justifiable ?

(*ii*) What order ?

5. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

6. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise documents on record, very meticulously. The only material question is whether those documents are incapable of supporting impugned order ? In other words whether impugned order is perverse or justifiable ?

7. It is seen that the Complainant filed affidavit (Exh. U-9) in support of his claim before the Labour Court. He has nowhere affirmed that he made any efforts to seek employment elsewhere but failed. On the contrary he is totally silent. No doubt, the Vikas Society has not filed its written statement. Even then, some burden lies on the Complainant to prove the facts whithin his knowledge.

8. Shri Yadav, learned Advocate representing the Vikas Society submitted that the Complainant has not joined the Society despite order of Labour Court, perhaps he might be serving elsewhere. As such, he is only interesting in monetary benefits and not actually reinstatement.

9. Apart from willingness or otherwise of the Complainant to join service as per decision of Labour Court, his silence regarding gainful employment coupled with delay of 6 years is self eloquent. I, therefore, find that learned labour Court rightly refused to grant continuity of service and back wages. Accordingly, I answer Point No. 1 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 24th October 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 351 OF 1998.—Shri Amul Gajanan Mayekar, R/o. Dhuriwada, Malwan, District Sindhudurg.—*Complainant*—*Versus*—(1) Principal, Government Ploytechnic, Malwan, Dist. Sindhudurg.—*Respondent No. 1;* (2) Deputy Director, Technical Education, Divisional Officer, 49, Kherwadi, Aliyawar Jang Marg, Vandre, Mumbai 400 051.—*Respondent No. 2.*

In the matter of Complaint u/s. 28(*1*) read with items 9 and 10 of Sch. IV of of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Appearances.— Shri A. G. Pansare, Advocate for the Complainant.

Shri S. R. Pisal, Asstt. Govt. Pleader for Respondent.

Judgement

This is a Complaint under section 28(*1*) read with items 9 and 10 of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971.

2. Admittedly, Respondent No. 1 is Principal of Government Polytechnic, Malwan, District Sindhudurg. Respondent No. 2 is Deputy Director of Technical Education and is empowared to appoint and promote employees working with various Government Polytechnics under his control. The Complainant started working under Respondent No. 1 as a Machine Attendant from the year 7th August 1989. His name is at Sr. No. 73 of the seniority list of machine attendants.

3. It is case of the Complainant that he was eligible to be promotted in the year 1996 on the post of General Mechanic, however, was not promptted. On the contrary, his junior employee Shri Gavade was promoted.

4. It is further alleged by the Complainant that one Shri Bansode was working as Black smith with Government Polytechnic, Malwan. Shri Bansode was transferred to Aurangabad in May, 1998 and the post of Black smith became vacant. He then repeatedly requested Respondent No. 2 to promote and appoint him on the vacant post of Black-smith, however, there was no possitive response. In fact, he alone is qualified and entitled to be appointed on the post of Black-smith. Respondent No. 2 informed him by letter dated 4th June 1998 that his claim will be considered as per Rules after conducting oral and written examinations of all eligible employees and his case cannot be considered separately. Even then, Respondent No. 2 is now intending to fill up post of Black-smith from Employment Exchange. Respondent No.2's such action is contrary to promotion rules and is an unfair labour practice under items 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act.

5. On above averments, the Complainant has prayed for requisite declaration of unfair labour practice, direction to promote him on the post of Black-smith from the date on which said post became vacant and other consequential reliefs.

6. Respondents 1 and 2 filed their say-*cum*-written Statement at Exh. C-3 and traversed all material allegations made against them. They contended that the Complainant met with an accident on 14th December 1990 which arose out and in the course of employment, whereby four fingers of his left-hand got crushed. Eventually, he suffered permanent disablement of more than 40% and was awarded compensation of Rs. 30381. As such, he is disable and physically incompetent to work on the post of Black smith. In addition, requisite educational qualification for the post of Black-smith is passing I. T. I. Course of Black-smith and Tenth Standard. The Complainant has passed Ninth standard only and, therefore, is uneligible to be promoted on the post of Black-smith. His representations for promotion were not considered on such grounds. It is further contended that post of Black-smith will be filled in through Employment Exchange. Thus, the Respondents justified their action and prayed for dismissal of interim application as well as the complaint.

7. Considering rival pleadings, following points arise for my determination:—

(*i*) Does the Complainant prove that he is eligible for being promoted to the post of Black smith ?

(*ii*) Does he further prove that Respondent No. 2's action of not considering him for being promoted is contrary to Service-rules ?

(*iii*) Does he further prove that Respondent No. 2 has engaged in unfair labour practice under the M.R.T.U. & P.U.L.P. Act ? If yes, under what item ?

(*iv*) What order ?

8. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) Yes, under item 9 of Sch. IV of the M.R.T.U. & P.U.L.P. Act.

(*iv*) The complaint is partly allowed.

Reasons

9. It has come on the record that the Complainant is at Sr. No. 73 of the Seniority list of Machine Attendants, prepared in the year 1990. It is also an admitted position that Respondent No. 2 informed Employment Exchange Office and other Recruiting Agencies by letter dated 19th July 1998 that post of Black smith is to be filled in with Government Politechinic, Malwan.

The Complainant has himself produced said letter with list Ex. U-7/1. It is own case of Respondent No. 2 that post of Black smith will be filled in through Employment Exchange.

10. The Complainant, in support of his claim, has examined himself on oath. He testified that Shri Bansode was working as Black-smith with Government Polytechnic, Malvan was transferred and said post became vacant. His next promotional post is of Black-smith. His such version is no-where challenged by the Respondents in his cross-examination. Thus, it has to be accepted that promotional post of the post of Machine Attendant is of Black-smith. The Respondents have only come with a case that the Complainant is educationally and physically dis-qualified for being promoted to the post of Black-smith. The Complainant replied in cross-examination that he has passed IXth standing but failed in Xth standerd. He admitted that first finger of his left hand is half-cut.

11. The Complainant has produced certificate dated 20th July 1999 issued by Respondent No. 1 that he is skillfully performing heavy work and can work effectively in other Departments with list Exh. U-18/1. Workshop Superintendent of Government Politechnic, Malvan has also issued similar certificate on 14th December 2000. In addition, Civil Surgeon, Sindhudurg has issued another certificate dated 15th December 2000 that the Complainant is capable to work as Black-smith. Both these certificates are produced with list Exh. U-25/1 and 2. Recently, work-shop Superintendent has issued fitness certificate to the Complainant on 27th June 2001 and the same is produced with list Exh. U-31/1. The Complainant has also produced extract of Seniority list with list Exh. U-33. It shows that one Shri S. K. Savant has passed VIth Standard and is working on the post of Black-smith with Government Polytechnic at Ratnagiri.

12. Shri Pansare, learned Advocate representing the Complainant argued that plea that a person must pass Xth Standard as well as I. T. I. Course of Black-smith for being eligible to work or promote on such post, is absolutely false. No evidence, in support thereof is produced by the Respondents. On the contrary, Shri S. K. Savant is working as Black smith at Ratnagiri and has passed VIth Standard only. Besides, the Complainant is certified by Civil Surgeon, Principal of Government Poltechnic, Malvan and Workshop Superintendent that he is fit to work as a Black-smith. As such, objections raised by the Respondent are totally baseless.

13. There is substantial merits in arguments advanced by Advocate, Shri Pansare, Admittedly, Shri Savant who has passed VIth Standard is working as Black-smith at Ratnagiri. Consequently, it cannot be accepted that passing Xth Standard and I. T. I. Course of Black-

smith is the minimum qualification for being appointed or promoted on the post of Black-smith. Admittedly, the Complainant has passed IXth Standard. I, therefore, have no difficulty to hold that he passess requisite qualification for being promoted on the post of Black-smith. As regards, alleged physical disablement of the Complainant to work as a Black-smith, certificates issued by the Civil Surgeon as well as by the then Principal, Government Polytechnic, Malvan and the Work-shop Superintendent falcify such plea of the Respondents. Civil Surgeon, Sindhudurg has clearly certified on 15th December 2000 that the Complainant is capable to work as Black-smith. Work-shop Superintendent has also certified accordingly on 14th December 2000 and 27th June 2001. I, therefore, have no difficulty to hold that the Complainant is eligible for being promoted to the post of Black-smith and Respondent No. 2's action of not promoting to him on said post is contrary to such rules. Accordingly, I answer Point Nos. 1 and 2 in the affirmative.

14. It consequently follows that Respondent No. 2's acts of not considering the Complainant for being promoted on the post of Black-smith is an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. & P.U.L.P. Act. I, answer Point No.3 accordingly.

15. The Complainant has prayed for direction to promote him on the post of Black-smith on the date on which the said post become vacant. He has produced seniority list of Machine Attendants, prepared in the year 1990. Recent Seniority list to show that he is the senior most among all Machine Attendants is not produced. Therefore, the Respondents cannot be directed to promote him on the post of Black-smith. In addition, it is not function of this Court to order promotion. The only directions which can be given is to consider Complainant's case for being promoted as per seniority by considering finding on point No. 1 above. I am fortified in having this view as per decision of Apex Court in *State of M. P. v/s Srikant Chaphekar reported in 1993 II-LLJ at page 662.*

16. To summarise, the Complainant posses requisite educational qualification and is physically fit for being promoted to the post of Black-smith, as per seniority. Respondent No. 2 was not justified in not considering him for being promoted on the ground of educationally and physically dis-qualified. Respondent No. 2's such action is contrary to service-rules and unfair labour practice under item 9 of Sch. IV of the M.R.T.U. & P.U.L.P. Act. Consequently, the complaint is partly allowed.

17. Finally, I pass following order :—

Order

(*i*) The complaint is partly allowed.

(*ii*) It is declared that Respondent No. 2 as engaged into an unfair labour practice under item 9 of Sch. IV of the M.R.T.U. & P.U.L.P. Act.

(*iii*) Respondent No. 2 is directed to cease and desist from engaging in such unfair labour practice, forthwith.

(*iv*) Respondent No. 2 are directed to consider the Complainant for being promoted on the post of Black-smith as per seniority, while filling vacant post of Black-smith with Government Polytechnic, Malvan or elsewhere.

(*v*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 21st October 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 36 of 2002.—The Chief Executive Officer, The Astha Peoples Co-operative Bank Ltd, Astha, Dist. Sangli.—*Petitioner.*—*Versus*—Shri Shripal Devappa Arage, R/o. Kadam Galli, At Post : Astha, Taluka Walwa, Dist. Sangli.—*Respondent.*

In the matter of Revision u/s. 44 of the M.R.T.U. & P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri S. S. Mutalik, Advocate for the Petitioner.

Shri K. D. Shinde, Advocate for the Respondent.

Judgement

This is a Revision by original Respondent challenging legality of order passed below Exh. U-2 in Complaint (ULP) No. 27 of 2002 by Labour Court, Sangli whereby he is directed to maintain statusquo and not to dismiss original Complainant from service, till decision of main complaint.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) joined present Petitioner (hereinafter referred to as the Bank) as a clerk in the year 1977 and then was promoted on the post of Branch Manager in the year 1995. He started working with Bank's Branch at Bhose from 22nd October 1997. The Bank served chargesheet dated 1st August 2000 upon him alleging four misconducts and was awarded punishment of reversion on the post of Cashier *cum* clerk. He was then posted to Bank's Arag Branch. It is case of the Complainant that the chargesheet was vague and he was compelled to admit the charges. I must state at this stage itself that said chargesheet is not subject matter of the complaint.

3. The Complainant was serving as cashier cum clerk with Bank's Branch at Ashtha, Taluka Walwa, Dist. Kolhapur, in the year 2001. The Bank sarved second chargesheet dated 6th August 2001 upon him alleging seven misconducts and started an inquiry. Pending such inquiry, the Bank served third chargesheet dated 12th October 2001 alleging three misconducts and started an inquiry. Advocate Shri Jagadale was appointed as an Inquiry Officer for both enquiries. The Complainant was serving at Sangli when was served with second and third chargesheets whereas the inquiry was kept with Bank's Head Office at Ashtha. The Complainant engaged Advocate, Shri U. R. Jadhav and one Shri Bashir Mulani to represent him in the enquiries and the enquiries proceeded further. The Bank then examined three witnesses and they were cross-examined by Complainant's Advocate. The Bank then examined one Shri R. S. Patil on 18th January 2002. The Complainant and his Advocate were absent on that date and hence the inquiry was adjourned to 22nd January 2001 for examination of Shri Patil. The Inquiry Officer then proceeded further observing that the Complainant is purposely not attending the inquiry and submitted his report dated 19th March 2002 that the charges levelled in both the chargesheets are proved. The Bank then issued show cause notice dated 22nd March 2002 calling upon him as to why further legal action should not be taken against him for proved misconducts.

4. In the mean-time, the Complainant filed complaint (ULP) No. 60 of 2002 on 27th February 2002 before the Industrial Court, Kolhapur to quash and get aside the chargesheets and enquiries there of. Its notice was sent to the Bank returnable on 3rd April 2002. The notice was served upon the Bank prior to 18th March 2002. Later on, it was withdrawn on 3rd April 2002.

5. Above complaint (ULP) No. 27/2002 was filed on 30th March 2002 alleging that the enquiries were purposely kept at Ashtha although the Complainant is serving at Sangli, is required to submit leave applications for all dates of enquiries and twenty leave applications are obtained from him. Notice of complaint filed before Industrial Court was served upon the Bank and therefore, the inquiry hastely completed on 19th March 2002. It is further alleged that the enquires were force and findings of the Inquiry Officer are perverse and baseless. Complainant's proposed dismissal is an unfair labour practice under items 1(*a*) (*b*), (*d*), (*f*) and (*g*) of Sch. IV of the M.R.T.U. & P.U.L.P. Act. The Complainant also made an application (Exh.U-2) under section 30(*2*) of the M.R.T.U. & P.U.L.P. Act. whereon the Labour Court made an *ex-parte* order directing the Bank to maintain *status quo* regarding Complainant's service till 1st April, 2002, with show cause notice.

6. The Bank filed its say *cum* written statement at Exh. C-2 conteding that the Complainant admitted misconducts stated in the chargesheet dated 1st August 2000. He was then served with second chargesheet dated 6th August 2001 and inquiry thereof was in progress. Internal inspection of Arag Branch took place wherein some misconducts were notices and third chargesheet dated 12th October 2001 was served. False and frivolous complaint was filed bafore Industrial Court and that too after continuation of inquiry for 4 months. There was no stay to the inquiry and hence the enquiries proceeded further. The Complainant purposely did not attend the inquiry although was aware of the dates thereof. The enquiries are well commensurate with principles of natural justice and there is no undue haste. Proved misconducts are grave and serious. Thus, the Bank justified its action.

7. Learned Labour Court, on perusal of inquiry papers and hearing both parties observed that the inquiry fairly proceeded till 26th February 2002. The inquiry ought to have been adjourned till 3rd April 2002 *i. e.* date of hearing of complaint filed before Industrial Court. It then observed that keeping the inquiry at Ashtha despite Complainant's working at Sangli and compelling him to file leave applications is an harassment. It then held that ajdournment application presented by Complainants son to the Inquiry Officer on 18th March 2002 was simply filed the inquiry was kept incomplate but final report was sent. Ultimately, it held that no opportunity of being heard was given to the Complainant by the Inquiry Officer and hence a *prima facie* case of unfair labour practice is made out. Ultimately, it allowed interim application as above, *vide* order dated 6th April 2002. The same is challenged in this Revision.

8. I heard both advocates at length. Considering rival submissions, following points arise for my consideration :—

(*i*) Whether impugned order directing the Bank to maintain *status quo* and not to dismiss the Complainant till decision of main complaint, is justifiable ?

(*ii*) What order ?

9. My findings, on above points, are under :—

(*i*) No.

(*ii*) The Revision Application is allowed.

Reasons

10. Before proceeding further, reference to some of the material charges is necessary. It is alleged that pigmy Agent Shri Chougule applied for loan that of Rs.10,000. The figure thereof was interpolated to Rs. 15,000 while getting the loan sanctioned an amount of Rs. 5,000 thereof was misappropriated by the Complainant for himself. It was further alleged that the Complainant then purposel got the application written from Shri Chougule that he (the Complainant) has not taken Rs. 5,000 out of the loan sanctioned.

11. Mrs. Mutalik, learned Advocate representing the Bank vehementaly argued that the Counsel of the Complainant cross examined three witnesses of the Bank till 20th December 2001. Till then, the Complainant never thought that chargesheets and enquiries are farce and need to be quashed. He pressurised Pigmy Agent Shri Chougule to withdraw his allegations of availing loan of Rs. 10,000 only and gave a model draft in his own handwriting on the application to be made to the Bank, that he is withdrawing his complaint. Said model draft is in the hand writing of the Complainant and is produced in the inquiry pappers. An Application (Exh. 16) was made on 20th December 2001 before the Inquiry Officer to obtain Complainant's specimen hand-writing. The Complainant then realised that his entire conspiracy will come on record and then started non co-operation movement. The inquiry was then adjourned to 12th January, 2001. Complainant's leave application (Exh. 19) was granted and then the inquiry was adjourned to 18th January 2002. Neither the Complainant nor his Advocate were present on such date. Examination-in-chief of Bank's witnesses was recorded on 18th January 2002 and the inquiry was adjourned for cross examination on 22nd February 2002. Complainant's adjournment application (Exh. 25) was granted 22nd February 2002 and the inquiry adjourned to

26th February 2002 for cross-examination. None was present from Complainant's side on 26th February 2002 and then 'no cross' order was passed and the inquiry was adjourned to 18th March 2002 for defence evidence. Advance notices of above all dates were given to the Complainant. The Complainant sent an application (Exh. 28) on 18th March 2002 through his Son stating that a complaint is filed before Industrial Court and the inquiry should not be made. The Complainant then never inquired about further progress. Consequenly observations of Labour Court that no opportunity was extended to the Complainant are unsustainable in law. The Complainant started non-co-operating and cannot unreasonably stretch towards principles of natural justice to suit his convenience. Mere presentation of the complaint before Industrial Court does not operate as a stay to the inquiry. Proved misconducts are not minor or technical but establish dis-honesty. Absolute devotion, integrity and honesty is the back-bone of the Banking business. Avenue of the inquiry is to be decided by the management and observations thereof by the Labour Court are unsustainable. In support of her arguments, she relied upon various decision to which, I will refer in my further discussions.

12. Shri K. D. Shinde, Learned Advocate representing the Complainant countered above arguments and replied at the outset that jurisdiction under section 44 of the M.R.T.U. & P.U.L.P. Act. is very limited and finding of fact recorded by the Labour Court cannot be set-aside. There cannot be re-appreciation of fact while entertaining Revision under section 44 of the M.R.T.U. & P.U.L.P. Act. For that end he relied on the decision in *Janata Sahakari Bank* V/s. *Dilipkumar reported in 1991 II-CLR at page 574 (Bom. H. C.)*. The very fact of completing the inquiry immediately on service of notice of complaint filed before Industrial Court establishes undue haste. He further added that application by Complainant's Son to the Minister is treated by the Bank as Political pressurisation and a misconduct but application presented by the Son to stay the inquiry is not entertained. The inquiry is purposely kept at Ashtha and the Complainant is required to avail leave on 20 dates Sky would not have been fallen had the inquiry been adjourned till decesion of the complaint before Industrial Court. Pigmy Agent Shri Chougule turned hostile. Bank's witness Shri Vadgave never complained since the year 1999 that the Complainant interpolated amount of Rs. 15,000 in place of Rs. 10,000. The Bank therefore is estopped from issuing chargesheets for such misconducts. He further added that the Complainant was allowed to work as cashier despite Bank's alleged plea of loss of confidence. His continuation despite ground of loss of confidence is un-acceptable. As such, the inquiry was simply a farce. Finally, he supported impugned order.

13. I am respectfully bound by observations in Janata Sahakari Bank's case (referred supra). Jurisdiction of the Industrial Court under Section 44 of the M.R.T.U. & P.U.L.P. Act. to interfere with findings of fact is extremely limited and arises only if the findings are perverse. However, if there is an error apparant on the face of the record or when evidence on record reasonably red is incapable of supporting impugned order, then the same can be set-aside. In other words, where evidence could not justify the conclusion or an inference is improbable then interference is warranted. I must state here itself that Court, while exercising jurisdiction of Section 30(2) of the M.R.T.U. & P.U.L.P. Act. must resist temptation to be crusader instead of adjudicature. Those observations are made in *Dalal Engineering Pvt. Ltd.* V/s. *Ramrao Savant reported in 1991 II-CLR at page 808 (Bom. H. C.)*

14. Learned Labour Court observed that keeping the inquiry at Ashthe and compelling the Complainant to avail leave for attending the inquiry, is nothing but harassment. It appears that learned Labour Court was much swayed away by the inconvenience to the Complainant for attending the inquiry. In fact, he (the Complainant) has never complained while participating in the inquiry that the inquiry should be kept at Sangli. It is observed in *Annasaheb* V/s. *Garware Wall Ropes Ltd. reported in 2002 II-CLR at page 722* that it is for the management to decide the place of inquiry considering various factor. Question of following principles of natural justice is material rather then the venue of the inquiry. The Complainant was represented by Advocate Shri Jadhav and therefore there was no question of feeling him unsafe or pressurising him at Ashtha. As such, observations that the Complainant was harassed are unsustainable in law.

15. Learned Labour has held that interpolating in the amount of loan applied by Pigmy Agent Shri Chougule is apparent. Shri Chougule then complained that he availed loan of Rs. 10,000 and loan of Rs. 500 is utilised by the Complainant. Specimen handwriting of the Complainant was solicited by the Bank in the Inquiry. There was no reason for the Complainant for not making any submission on said application Exh. 16. Learned Labour Court has observed that evidence was necessary to decide the controversy of interpolation and no finding in either way can be given on it. It is settled law that strict and sophasticated rules of evidence are not be followed in the inquiry and here-say evidence could be admitted. If other evidence is sufficient then hostality of the witness is of no consequence. Interpolation is self eloquent. As such, observations at the interlocutory stage that evidence before the Court is necessary to decide author of the interpolation are contrary to settled principles of law and does not stand to reason.

16. Learned Labour Court has held that the inquiry ought to have been adjourned till decision *i. e.* till 3rd April 2002. Admittedly, there was no stay to the inquiry in the complaint filed before the Industrial Court. As such, in the eyes of law, there was no stay to the inquiry. The fact that the Complainant fully co-operated in the inquiry till examination of three witnesses, *prima facie* speaks voluminously. If the chargesheet and inquiry of a farce, then he ought to have immediately rughed to the Court for quashing them. Averments in that complaint was that no later charges could be issued once the Complainant is reverted and the Complainant is compelled to file leave application. Thus, *prima facie,* it appears that a complaint was filed before Industrial Court to delay completion of the inquiry and that too after Bank's application to the Enquiry Officer to obtain specimen handwriting of the Complainant. Presentation of the complaint does not automatically operate as a stay to the inquiry. In addition, it appear that the hearing was adjourned for 2/3 dates and there was no undue haste as such. The Complainant has not even cared to verify about the fact of application presented through his Son. It is held in *J. T. Chandra Industry* V/s. *Nathuram Khandale reproted in 1989 II-CLR at page 751* that a party making an Application for adjournment before the Enquiry Officer cannot presume that the application for adjurnmet would surely be granted and it is duty of the party to see whether the adjournment sought is granted or not. In the present case, the Complainant has not even bothered to note whether his application to stay the inquiry is granted or not. It is surprising to note that the enquiries were not stayed despite filing of such application in the complaint presented before the Industrial Court, even then similar application was filed before the Enquiry Officer. Thus, relief which was not granted *ex-parte* by the Industrial Court could not have been claimed before the Enquiry Officer.

17. It appears from the inquiry papers that inquiry was adjourned for cross-examination of Bank's witnesses Shri Patil as well as for defence evidence. It is held in *Satish Saptarshi* V/s. *Kirloskar Oil Enqines Ltd.* reported *in 1995 I CLR at page 839 (Bom. H. C.)* that a technical violation of principles of natural justice will not fall under item 1(f) of Sch. IV but a blatant disregard of obvious principles of natural justice would fall. It is held in *Cosmos India Rubber Pvt. Ltd.* V/s. *Mumbai Mazdoor Sabha reported in 1989 I CLR at page 432(Bom. H. C.)* that every infraction of principles of natural justice may not amount to unfair labour practice under item 1(f) of Sch. IV of the M.R.T.U. & P.U.L.P. Act and there must be utter disregard of the principles of natural justice. The word 'utter means extreme, absolute, complete and total. In the present case, it is the Complainant who has not availed opportunity and purposely started non-cooperating in the inquiry. Mere presentation of the complaint before Industrial Court is of no consequences for continuation or dis-contiouation of the inquiry. Thus, the Enquiry Officer is *prima facie* justified in proceeding further. It appears that the Labour Court has unduly streteched a concept of natural justice. Item 1(f) is attracted only when there is utter dis-regard of principles of natural justice. I find that learned Labour Court misread item 1(f) of Sch. IV of the Act and proceeded in a wrong direction. As such, observations that the inquiry, is completed in a hasty manner are contrary to the evidence on record and unsustainable in law.

18. To summarise, I find that learned Labour Court performed a role of a crusader rather than of a judicature. *Prima facie,* complaint filed before Industiral Court was to delay the inquiry. No *ex-parte* stay was granted therein. Even then an application was made before the Enquiry Officer to stay the inquiry for no reason. The Complainant did not bother to verify as to what happened to the adjournment application sent through his Son. The Inquiry Officer adjourned the inquiry despite Complainant's absence for cross-examination of witness Shri Patil as well as for defence evidence. Consequently, it cannot be accepted that the inquiry is complated with utter disregard to principlies of natural justice or undue haste. It appears that the Complainant started non-cooperating in the inquiry on presentation of the application by the Bank for obtaining his specimen hand-writing. Interpolation is *prima facie* self eloquent. Utmost intigrity and honesty is required in banking business. Alleged misconducts are grave and serious but the Labour Court has unduly stretched the concept of natural justice and recorded a perverse finding that *prima facie* case of unfair labour practice is made out. On the other hand, legal inference is otherwise. I, therefore, find that impugned order is neither justifiable nor sustainable and required to be set-aside. Accordingly, I answer Point No. 1 in the negative and pass following order :—

Order

(i) The Revision Application is allowed.

(ii) Impugned order directing the Bank to maintain status quo and not to dismiss the Complainant till decision of main complaint is set-aside.

(iii) Interim application (Exh. U-2) stands dismissed.

(iv) R. & P. be sent to Labour Court, Sangli and parties shall appear there on 15th July, 2002.

(v) No order as to costs.

Kolhpur,

dated the 1st July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

BEFORE THE MEMBER, INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

REVISION APPLICATION (ULP) No. 61 of 2001. Shri Balaso Shantappa Nagave, R/o. Bastwad, Tal. Shirol, District Kolhapur.—*Petitioner* (Original Complainant)—*Versus*—(1) Managing Diractor, Deshbhakta Ratnappa Kumbhar Sahakari Sakhar Karkhana Ltd., Previous name-(Panchaganga S. S. K. Ltd.) Ganganagar-Ichalkaranji, District Kolhapur.—*Respondent No. 1.* (Original Respondent), (2) Hon'ble Judge, Labour Court, Kolhapur.—*Respondent No. 2.*

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri K. A. Mahajan, Advocate for the Petitioner.

Shri M. S. Topkar, Advocate for the Respondent No. 1.

Judgment

(Dated the 11th October 2002)

This is a revision by original Complainant challenging legality of Judgment and Order passed in Complaint(ULP) No. 213/1989 by Labour Court, Kolhapur whereby relief of reinstatement with continuity of service and full back wages is refused solely on the ground that the complaint is barred by limitation.

2. Present Petitioner (hereinafter refered to as 'the Complainant') filed above complaint on 15th December 1989 against present Respondent No. 1 (hereinafter referred to as 'the sugar factory') alleging unfair labour practice under Item-1(*a*), (*b*), (*d*), (*e*), (*f*) & (*g*) of Sch. IV of the *M.R.T.U.* & P.U.L.P. Act, 1971 *inter-alia,* contending that he was in employment of the sugar factory since 20 years having unblemished record. He was on medical leave from 21st April 1988 to 2nd May 1988. He submitted leave application alongwith medical certificate. After expiry of leave he went to resume duties as usual but was not allowed to resume duties. He thereafter worked at the transferred place. Later on he was not allowed to join duties from 1st September 1989 stating that he is removed from service. He, therefore, alleged that his oral termination is an unfair labour practice. He further contended that there is delay in filing the complaint and the seperate application is filed for condonation of delay alongwith the complaint. Finally, he prayed for declaration of unfair labour practice, reinstatement with continuity of service and full back wages. The sugar factory contended, *vide* written statement Exh. c-13, that the complaint is barred by limitation and needs to be dismissed in limite. He further contended that the Complainant was transferred to Vasagade Irrigation Scheme from Akiwat-Bastwad Irrigation scheme but never reported at the transferred place and his absent since then. His services are never terminated, as alleged. Finally, the sugar factory prayed for dismissal of the complaint.

3. The Labour Court framed issues at Exh. 20 on 18th December 1992. Additional issue regarding maintainability of the complaint was framed on 30th March 2000. The parties then went to the trial. The Complainant examined himself at Exh. U-33. The sugar factory did not lead oral evidence but produce correspondence with the Complainant regarding the leave, his transfer order and charge sheet cum show cause notice, with list Exh. C-31.

4. Learned Labour Court, on perusal of evidence and hearing both parties, observed that neither an application for condonation of delay is filed nor there are averments in the complaint for condonation of delay and, therefore, the delay cannot be condoned. It then held that the complaint is not maintainable and the other issues does not survive. Finally, it dismissed the complaint by Judgment and Order dated 6th August, 2001. The same is challenged in this revision.

5. I heard both Advocates. Considering rival submission, following points arise for my determination :–

(1) Whether exercise of powers under Sec. 44 of the M.R.T.U. & P.U.L.P. Act, 1971 is warranted in the peculier facts and circumstances of this case ?

(2) What order ?

6. My findings, on above points, are as under :–

(1) Yes.

(2) Revision Application is partly allowed.

Reasons

7. Shri Mahajan, learned Advocate representing the Complainant argued in the first phase that both parties proceeded on the assumption that controversy of oral termination is going to be adjudicated by the Court. No specific issue regarding the limitation was framed. As such, plea of limitation is impliedly waived by the sugar factory. The Complainant is terminated without inquiry. In these circumstances, the Labour Court ought to have condoned the delay or at least framed point as preliminary one. If the later mode would have been followed then the Complainant would have filed an application for condonation of delay. He argued, in the second phase, that the Complainant is illiterate, has no knowledge of law and thatefore, should not suffer for inaction of his Advocate. In support of his argument he relied on decision of Hon'ble Apex Court in *Refic and another V/s. Munshilal and another* reported in AIR 1981 SC at page 1496.

8. Shri Topkar, learned Advocate representing the sugar factory replied that the Complainant was well aware of mandatory requirement to file an application for condonation of delay. Accordingly he contended in the complaint also. Plea of limitation is a law point and there cannot be waiver of such point. Therefore, learned Labour Court has rightly dismissed the complaint.

9. Submission that plea of limitation was waived cannot be accepted as it is a law point. Besides, the Complainant was well aware of the fact that the complaint is not within limitation and application for condonation of delay has to be filed. Accordingly, he pleaded in the complaint also.

10. It further appears that learned Labour Court although framed an issue as to whether the complaint is maintainable, the Complainant was well aware that the complaint is not within limitation and he has to make out a case that there were good and sufficient reasons for late filing of the complaint. But it cannot be ignored that he was working as a clerk and not conversant with the Court procedure. In these circumstances, question arises as to whether he should suffer for inaction of his counsel. Observations of Hon'ble Apex Court in Rafig & Anr. *V/s.* Munshilal & Anr. (Referred Supra) are self-eloquent and answers the above question. It is observed by Hon'ble Apex Court as under :–

> "The party may be a villager or may belong to a rural area and may have no knowledge of the Court's Procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest."
>
> It is further observed that :–
>
> "What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate."

In the light of above dictum of Hon'ble Apex Court and in the peculier facts and circumstances of this case, the Complainant should not be made to suffer only because his then Advocate did not file written application for condonation of delay. The evidence regarding merits and demerits of other issues is already on record. Thus, it is a fit case to exercise powers under Sec. 44 of the M.R.T.U. & P.U.L.P. Act by directing the Complainant to file written application for condonation of delay. Accordingly, I answer point No. 1 in affirmative.

11. Before parting with this order, a note needs to be added here. The Labour Court should consider while granting relief, if any, to the Complainant the delay in filing the complaint if the Complainant succeeds ultimately.

12. Finally, I pass following order :–

Order

(*i*) The Revision Application is partly allowed and impugned decision is set aside.

(*ii*) The Petitioner-Complainant is directed to file a written application for condonation of delay, within 15 days from today. Learned Labour Court, Kolhapur is directed to consider such application, if filed, on merits.

(*iii*) R. & P. be sent to Labour Court forthwith and the parties shall appear there on 21st October 2002.

(*iv*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Mah. Kolhapur.

Kolhapur,
Dated 11th October 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

REVISION APPLICATION (ULP) No. 18 of 2002. The Managing Director, Vasantdada Shetkari Sahakari Sakhar Karkhana Ltd, Sangli. Distirict, Sangli.—*Petitioner—Versus*— Shri Vishwas Ananda Koli, R/o 17th Galli, Jayasingpur, Tal. Shirol, Dist. Kolhapur.—*Respondent.*

In the matter of Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri S. S. Mutalik, & Sou. S. S. Mutalik, Advocate for the Petitioner.

Shri S. N. Inamdar, Advocate for the Respondent.

Order

This is a Revision by original Respondent Sugar Factory Challenging legality of judgment and order passed in complaint (ULP) No. 89 of 1997 by Labour Court, Sangli, whereby original Complainant a Cleaner is directed to be reinstated on same post with continuity of service but without back wages, bonus etc.

2. Learned Labour Court has held that findings of the Inquiry Officer are perverse and then granted necessary reliefs. Such findings of the Labour Court are mainly challenged in this Revision.

3. I heard the Revision Applicant on 18th October 2002 at Sangli Camp. Smt. Mutalik, learned Advocate representing the Sugar Factory submitted that the Sugar Factory is mainly dis-satisfied with finding of the Labour Court that findings of the Inquiry Officer are perverse. She fairly stated that the Sugar Factory is ready to reinstate the Complainant perspectively if findings of the Inquiry Officer are approved by this Court or admitted by the Complainant.

4. Eventually, the Complainant filed a pursis (Exh. U-3) that he admits findings of the Inquiry Officer provided he is reinstated in service with continuity of service but without back wages. Sou. Mutalik endorsed on the pursis that she has no objection to allow the Revision Application accordingly. Thus, with consent of parties, findings of the labour Court that findings of the Inquiry Officer are perverse, is set aside and it is held that findings of the Inquiry Officer are legal and proper.

5. Finally, I pass following order :–

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned decision to the extent of holding findings of the Inquiry Officer are perverse, is set aside and directions regarding reinstatement are modified.

(*iii*) The Suger Factory is directed to reinstate original Complainant with continuity of service but without back wages with effect from 28th October 2002.

(*iv*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 22th October 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———

BEFORE THE MEMBER, INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

REVISION APPLICATION (ULP) No. 78 of 2002. Maharashtra State Road Transport Corporation, through Divisional Traffic Supdt., Ratnagiri Division, Ratnagiri.—*Petitioner* (Original Respondent)—*Versus*—Shri Balaji Sakharam Sonkamble, A/P-Dapoli, District-Ratnagiri.—*Respondent* (Original Complainant).

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri M. G. Badadare,, Advocate for the Petitioner.

Shri A. G. Pansare, Advocate for the Respondent.

Judgment

(Dated the 11th October 2002)

This is a revision by original Respondent-M.S.R.T.C. challenging legality of order passed below Exh. U-2 in Complaint(ULP) No. 179/2000 by Labour Court, Kolhapur whereby the Corporation is restrained from dismissing its driver-Original Complainant on the basis of show cause notice, pending hearing and final disposal of main complaint.

2. Admittedly, present Respondent (hereinafter referred to as 'the Complainant') is in service of present Petitioner (hereinafter referred to as 'the Corporation') as a driver. The Corporation served charge-sheet dated 23th February, 2000 upto him alleging misconducts under clauses-4, 10, 12(*b*), 22, 24(*a*), 24(*b*) and 25 of its Discipline and Appeal Procedure mainly alleging that he was driving a private vehicle unauthorisedly on 3rd February 2000 and that too by wearing uniform and putting badge of the Corporation. Then an inquiry took place. The inquiry officer held that all charges levelled against the Complainant are proved. The Corporation then served a show cause notice upon him as to why he should not be dismissed from service.

3. It is case of the Complainant that he gave proper explanation to the charge-sheet, even then an inquiry was initiated against him. He has not committed any misconduct. The inquiry is contrary to the principles of natural justice and the findings are also perverse. He then alleged that proposed show cause notice of dismissal is an unfair labour practice under Items-1(*a*), (*b*), (*d*), (*f*) & (*g*) of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971. He made an application (Exh. U-2) under Sec. 30(*2*) of the M.R.T.U. & P.U.L.P. Act, 1971 and prayed to restrain the Corporation not to terminate his services on the basis of show cause notice, till decision of main complaint.

4. The Corporation resisted the complaint as well as the interim application by say cum written statement at Exh. C-11, contending that the Complainant was driving a private passanger vehicle on Bombay-Goa National Highway and that too by wearing his uniform. His such act is serious misconduct. He admitted in the spot statement that he was carrying the passangers from Dapoli to Bombay. The inquiry is in consonance with the principles of natural justice and the findings of inquiry officer justifiable. proved misconducts are grave and serious and hence proposed punishment of dismissal is legal and proper. Thus, the Corporation justified its action and prayed for dismissal of the interim application as well as the complaint.

5. Learned Labour Court, after hearing both parties, held that the Complainant was driving the tempo while wearing uniform, however was not on duty. Complainant's brother was driving the private vehicle who became sick and in such circumstances might have compalled him to drive the vehicle. It further observed that such misconduct is not so serious warranting punishment of dismissal. Finally it held that proposed punishment is shockingly disproportionate and hence, *prima facie* case of an unfair labour practice is made out. Ultimately, it allowed the interim application, as above *vide* order dated 30th May 2002. The same is challenged in this revision.

6. I heard both Advocates. Considering rival submission, following points arise for my determination :–

(1) Whether impugned order restraining the Corporation from taking action of dismissal is justifiable ?

(2) Whether impugned order needs to be clarified ?

(3) What order ?

7. My findings, on above points, are as under :–

(1) Yes.

(2) Yes.

(3) The Revision Application is dismissed with a little clarification.

Reasons

8. This being a revision under Sec. 44 of the M.R.T.U. & P.U.L.P. Act, 1971 it is not necessary to scrutinise rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order ? In other words, whether impugned order is perverse or justifiable ?

9. Shri Badadare, learned Advocate representing the Corporation submitted that proved misconducts, *prima facie,* spell of dishonesty and those cannot be said to be minor or technical one. He further submitted, in alternate, that the Corporation cannot be absolutely restrained from awarding any other punishment.

10. Shri Pansare, learned Advocate representing the Complainant replied that there was neither wrongful gain to the Complainant nor wrongful loss to the Corporation. In fact, the Complainant might have been compelled to drive the private vehicle as his brother fell sick. As such, there is no element of dishonesty and proposed punishment is shockingly disproportionate.

11. There is nothing on record to show that the Complainant was regularly driving private vehicles. It appears from his plea that he was compelled to drive the private vehicle as his brother fell sick. Thus, his act appears to be involuntary. Even otherwise, the misconduct is not so serious warranting dismissal. There is no wrongful gain to him nor wrongful loss to the Corporation. I, therefore, find that learned Labour Court has rightly held that proposed punishment is shockingly disproportionate and *prima facie* amounts to an unfair labour practice. Accordingly, I answer point No. 1 in affirmative.

12. Learned Labour Court has clearly stated that the Corporation is restrained from taking action of dismissal. Thus, it goes without saying that it can award any other appropriate punishment otherwise that of dismissal or discharge. Even then to make it more clear I say that the Corporation is at liberty to award any other appropriate punishment otherwise than of dismissal or discharge. I answer point No. 2 accordingly.

13. Finally, I pass following order :–

Order

(*i*) The Revision Application is dismissed.

(*ii*) It is made clear that the Corporation has liberty to award any other punishment to the Complainant than of dismissal or discharge.

(*iii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Mah. Kolhapur.

Kolhapur,
Dated the 11th October 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

IN THE INDUSTRIAL COURT, AT MUMBAI

COMPLAINT (ULP) No. 236 of 1992—(1) Maharashtra Girni Kamgar Union, 252, Janata Colony, Ramnarayan Narkar Marg, Ghatkopar East, Mumbai 400 077. (1-A) Mr. Rajendra Yeshwant Chawan (Deleted *vide* Exh. C-18); (2) Mr. Sudhakar Jayram Rawut; (3) Mrs. Smita Chandrakant Malap; (4) Mrs. Smita Rajendra Nikade; (5) Deleted *vide* Exh. C-18; (6) Mr. Ganesh Mahadeo Manjrekar; (7) Deleted *vide* Exh. C-16; (8) Mr. Patiraj Dukhi; (9) Deleted *vide* Exh. C-16; (10) Mr. Dilip Yeshwant Kamble; (11) Mr. Maruti Mahadeo Shinde; (12) Deleted *vide* Exh. C-16; (13) Deleted *vide* Exh. C-16; (14) Deleted *vide* Exh. C-16; (15) Mr. Shvdhg Kishor Mangakar; (16) Mrs. Shobha Namdeo Haldankar; (17) Deleted *vide* Exh. C-16; (18) Deleted *vide* Exh. C-16; (19) Deleted *vide* Exh. C-16; (20) Deleted *vide* Exh. C-16; (21) Mrs. Jyoti Arjun Gawli; (22) Deleted *vide* Exh. C-16; (23) Mrs. Sangita Nana Shedge; (24) Miss. Pramila Babaji Gawade; (25) Deleted *vide* Exh. C-16; (26) Deleted *vide* Exh. C-16; (27) Deleted *vide* Exh. C-16; (28) Mrs. Arti Atmaram Kadam; (29) Mrs. Sandhya Mahadeo Shinde; (30) Deleted *vide* Exh. C-16; (31) Miss. Kanchan Subhash Patil; (32) Mrs. Vidya Vivek Jadhav.—*Complainants*—*Versus*—(1) The Manager, Morarjee Gokuldas Spg. & Wvg. Co. Ltd., Unit No. o1, Parel, Mumbai 400 012. (2) Shri Amarsingh Chaudhary; Mending Contractor, Morarjee Gokuldas Spg. & Wvg. Co. Ltd., Union No. 01, Parel, Mumbai 400 012.—*Respondents.*

In the matter of complaint of unfair labour practices under item 1(*a*) of Sch. II and under items 2, 9 and 10 of Sch. IV of M.R.T.U. and P.U.L.P. Act, 1971.

PRESENT.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Mr. Kishor Deshpande for Complainants.

Mr. P. R. Singh, Advocate for Respondents.

Judgment and Order

1. This is a complaint of unfair labour practices under item 1(*a*) of Sch. II and under items 2, 9 and 10 of Sch. IV of the M.R.T.U. & P.U.L.P. Act, Initially, it was filed by the Complainant No. 1 union. During the pendency, 32 employees, out of 57 workmen can to be joined as the Complainants.

2. Briefly stated, the case of the Complainants is as under :–

The Respondent No. 1 is the company registered under the companies Act, Its Board of Directors are looking after its affairs. The Board of Directors have appointed the Manager, who is looking after its day to day affairs. It has owned Unit No. 1 and the same is situated at Lalbaug, Parel, Mumbai. It is further alleged that there is a mending department in the Unit No. 1. The Respondent No. 1 has given the work of mending in the Unit No. 1 on contract to one Mr. Amarsingh Chaudhary, *i.e.* the Respondent No. 2 who has employed 57 employees *i.e.* the concerned workmen to do the work of mending in the mending department in the Unit No. 1 of the Respondent No. 1. It is further alleged that the Respondent No. 1 company has given the work of mending the cloth to the Respondent No. 2 contractor on contract with a view to deprive the concerned workmen from their proper wages and service conditions. It is further alleged that the concerned workmen were threatened by the Respondent No. 1 and its agents, when they approached them for redressal of their grievances. Its agents threatened them that their services would be terminated in case of persuation of any matter and on account of joining the Complainant union. It is further alleged that the Respondent No. 1 company violated the terms of standardization award as applicable to the operatives in the textile industry in the local area of Greater Mumbai and the provisions of

the Bombay Industrial Relations Act by giving the work of regular nature on contract basis to the Respondent No. 2 contractor. Thus, the Respondent No. 1 company has committed the acts of unfair labour practices under items 2, 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act. It is further alleged that both the Respondents have jointly and severally denied the concerned workmen the identity cards/attendance cards, minimum wages, pay slips etc. and thereby committed an act of unfair labour practices under item 9 of Sch. IV of the M.R.T.U. & P.U.L.P. Act. Hence this complaint for declaration of unfair labour practices, for giving status to the concerned employees as mill workmen, restraining both the Respondents from refusing the concerned workmen to give work etc.

3. The Respondent No. 1 has filed its say at Exh. C-2. According to it, the complaint is filed by the Complainant union on behalf of the concerned workmen working under the Respondent No. 2 contractor. Therefore, the present complaint in respect of the workmen, who are admittedly not the workmen of the Respondent No. 1 company, is not maintainable. It has further contended that the mending work is given on contract to the Respondent No. 2 contractor, who is carrying out the said work of mending under the contract. The said contract not being abolished under the provisions of the Contract Labour (Regulation & Abolition) Act, the relations between the concerned workmen and the Respondent No. 2 contractor remains the same as the workmen/ employees and the employer. The authority which has got the jurisdiction to deal with the said subject is the State Government. Thus, this Court has no jurisdiction to deal with the matter of abolition of contract. Secondly, there is a representative union *viz*. Rashtra Mill Mazdoor Sangh, which can alone deal with the Respondent No. 1 company or initiate proceedings before the Court. The Complainant union has no *locus standi* to persue the present complaint. It is further alleged that the Manager of the Respondent No. 1 company looks after the affairs of the Unit No. 1 of Parel, Mumbai. However, the contention that the Manager of the Unit No. 1 is responsible for proper implementation of the labour laws is a misconceived contention. It is further contended that the contention that the wages for the workmen of the mending department are paid as per the standerdization award, is a misleading statement, as no wages are prescribed in the mending work in the standerdization award. The mending work is not essential part and parcel of the mill process. The mending is the process, which is carried on the finished products. Therefore, the mending work is given on contract. It is further contended that there is no case appearing from the facts that the allegation of threats directed against the Respondent No. 1 company, but it is against the Respondent No. 2 contractor. There is also no case of settlement, agreement or award and the Respondent No. 1 company has not contravened any of them. Therefore, the unfair labour practices under item 9 of Sch. IV of the M.R.T.U. & P.U.L.P. Act is not attracted to the present complaint. There is also no case that that the Respondent No. 1 company did any act of force or violence. Therefore, Item No. 10 of Sch. IV of the Act is not attracted to the present complaint. Lastly, it is contended that the Respondent No. 1 company has not engaged in any unfair labour practice. Lastly, it has prayed for disposal of the present complaint.

4. The Respondent No. 2 contractor was served with the notice, but he remained absent and failed to file his written statement.

5. On the pleadings and the documents, if any my learned predecessor framed the following issues and I have recorded my findings thereon for the reasons stated below :–

Issues	*Findings*
(*i*) Does the Complainant union prove that the Respondents have committed unfair labour practices under item 1(a) of Sch. II and under items 2, 9 and 10 of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971 ?	Connot be decided.
(*ii*) Does the Complainant union entitled to get the reliefs, as claimed in this complaint ?	No.
(*iii*) What order ?	As per order below.

Reasons

6. The Complainant union has examined in all 8 witnesses; viz. Mr. Rajendra Yeshwant Chawan-Complainant No. 1-A ; (2) Mr. Sudhakar Jayram Raut-Complainant No. 2 ; (3) Mr. Dilip Yeshwant Kambli-Complainant No. 10 ; (4) Mrs. Rasika Rakesh Jadhav; (5) Mr. Francis C. K. ; (6) Mrs. Sunita Prabhakar Gawde ; (7) Mrs. Shobha Namdeo Haldankar Complainant No. 16 ; and (8) Mr. Jayprakash Tukaram Dilare. On the other hand, the Respondent No. 1 company has examined only one witness *viz.* Mr. Ravindranath Manik Tawde, then Personnel Officer of the Respondent No. 1 company.

7. It is necessary to mention here that initially the Complainant No. 1 union alone filed a complaint for in all 57 workmen. During pendency, the Respondent No. 1 company filed application Exh. C-16 stating that 20 workmen, out of the concerned workmen, have settled their disputes with the Respondents and therefore, their names may be deleted from the list of the concerned workmen. The said application was supported by individual applications of these 20 concerned workmen. From the said individual applications, it appears that these concerned 20 workmen accepted their legal dues as shown in their individual applications from M/s. Laxmi Enterprise *i.e.* the contractor. My learned predecessor personally verified the said applications by making inquiry with the concerned 20 workmen and allowed the application Exh. C-16 deleting these concerned 20 workmen by passing 2 seperate orders dated 29th March 2000 and 4th May 2000. Again, the Respondent No. 1 filed 2 applications Exh. C-18 for deleting the names of 2 concerned workmen. Thus, during the pendency, the names of 22 concerned workmen came to be deleted from the list of the concerned workmen. Thus, the present complaint remains only for 35 workmen.

8. Before the applications Exh. C-16 and C-18, in all 32 workmen, out of the concerned workmen, were impleaded as the Complainants to the present complaint. After both the applications, the Complainants at Sr. Nos. 1-A, 5, 7, 9, 12 to 14, 17 to 20, 22, 25 to 27 & 30 came to be deleted from the present complaint.

9. It is the case of the Complainants that the Respondent No. 1 company had given the work of mending to the Respondent No. 2 contractor and the concerned workmen were working under the said contractor. It is also case of the Complainants that the Respondent No. 1 company had also provided premises for being got the operation of mending performed by the concerned workmen. On this point, it appears from the evidence of Rajendra Yeshwant Chavan that the work of mending was given to the Respondent No. 2 contractor and the Respondent No. 2 contractor was getting the work of mending done by engaging him and other workmen.

Further, his evidence shows that his attendance is marked in the seperate muster than the muster for regular/permanent workmen of the mending department of the Respondent No. 1 company. The evidence of the witness Mr. Sudhakar J. Raut also shows that the muster for the permanent/regular workmen in the mending department is maintained seperately and his name and the names of other 4 Complainants are not entered in the muster roll of the permanent/ regular workmen. His evidence further shows that the Respondent No. 1 company has given the work of mending to the Respondent No. 2 contractor. The evidence of Mr. Dilip Y. Kamble shows that he used to sign in one muster, but the workmen of the Respondent No. 1 company were not signing in the said muster, His evidence further shows that the Respondent No. 2 contractor was giving them attendance cards and one Mr. Francis Master was marking their attendance in the said attendance cards. The evidence of Mrs. Rasika R. Jadhar shows that the muster of the regular/permanent workmen was seperately maintained in the Respondent No. 1 company. Her further evidence shows that the duty hours of the regular/permanent workmen of the Respondent No. 1 company is different than her duty hours. The evidence of Mr. Francis C. K. shows that there were 40 persons working alongwith him in the mending department and the strength of the said department was increased to 80 workmen during the period from 1987 to 1992. These workmen were given attendance cards in the name of Balaji Enterprizes and one Mr. Amarsingh was making salary payments to them. During his cross-examination, he has stated that his name does not disclose in the names list of the concerned workmen. However, the fact remains that the workmen working in the mending department were given attendance cards by Balaji Enterprizes and the Respondent No. 2 contractor was making salary payments to them. The evidence of Mrs. Sunita P. Gawde shows that she was working in the mending department and she was given a pass known as attendance card/hajeri pass in the name of Balaji Enterprizes. From her cross-examination it appears that there were workmen working under the contractor and also the workmen of the Respondent No. 1 company. The method of noting their attendance was also different. The evidence of Mr. Jayprakash Tukaram Bhilare shows that there was different service condition between the workmen of the contractor and the Respondent No. 1 company's workmen. Thus from the evidence of these witnesses examined by the Complainants, it shows that there were two types of workmen *viz,* the workmen working under the contractor and the regular/permanent workmen of the Respondent No. 1 company. The concerned workmen shown in the list attached to the present complaint were working under the Respondent No. 2 contractor. They were given attendance cards in the name of Balaji Enterprizes and not by the Respondent No. 1 company. They were paid their wages by the Respondent No. 2 contractor. A seperate muster for the workmen working under the contractor was maintained and the workmen working under the contractor were signing therein.

10. The learned advocate for the Respondent No. 1 has submitted that the present complaint is filed by the workmen working under the contractor against the principal employer for abolition of the contract and for claiming the benefits of regular and permanent workmen of the Respondent No. 1 company, Thus, the present subject matter is covered by the well known decisions of the Hon'ble Supreme Court in the case of Kalyani Steel Limited and in the case of Cipla Limited, wherein the Hon'ble Supreme Court has held that such an issue cannot be decided in a complaint under the M.R.T.U. & P.U.L.P. Act and such a complaint is not maintainable. Thus, the present complaint is not maintainable in view of the decisions in both the Supreme Court cases. In support of his submissions, he has relied on these 2 cases. First is between Cipla Limited and Maharashtra General Kamgar Union reported in *2001 I CLR 754 SC.* In the said case, the union of workmen filed a complaint under Sec. 28 of the M.R.T.U. & P.U.L.P. Act alleging unfair labour practices in respect of the workmen/sweepers. It was an allegation of the union that these workmen are engaged by the company, but show was made that they were contract labour employed by the labour contractor. The company denied that

allegation and also the fact that the said workmen were engaged by it or there was any relationship of employer and employees between them. The Labour Court dismissed the complaint and the Industrial Court in the revision confirmed the same. In the writ petition, the Division Bench of the High Court reversed the findings of both the courts below, after recording the finding that the workmen were the employees of the company. On the facts, the Hon'ble Supreme Court, held that the company has disputed the relationship of employer and employees between it and the workmen and as such the question of unfair labour practice cannot be enquired into at all. It is further held that if the employees are working under the contractor covered by the Contract Labour Regulation and Abolition Act, then it is clear that the Labour Court or the Industrial Court adjudicating authorities cannot have any jurisdication to deal with the matter, as it falls within the province of the appropriate Government to abolish the same. It is further held that the object of enactment is amongst other aspects enforcing provisions relating to unfair Labour practices. If that is so, unless it is undisputed or indisputable that there is employer-employees relationship between the parties, the question of unfair labour practices cannot be enquired into at all. In the other case, between Vividh Kamgar Sabha and Kalyani Steel Limited reported in *2001 I CLR 532 SC.* Their Lordships have held that the provisions of the M.R.T.U. & P.U.L.P. Act can only be enforced by persons who admittedly are the workmen. If there is a dispute as to whether the employees are the employees of the company, then that, dispute must first got resolved by raising a dispute before an appropriate forum. It is only after the status as a workman is established, in an appropriate forum, then complaint could be made under the provisions of the M.R.T.U. & P.U.L.P. Act. In the present case, admittedly, the concerned workmen were working under the Respondent No. 2 contractor and the Respondent No. 1 company has disputed the relationship between it and the concerned workmen as employer and employees. In view of the facts and the observations in the above both cases, complaint of unfaire labour practice cannot be enquire into at all, unless it is undisputed or indisputable that there exists employer-employees relationship.

11. The learned representative for the Complainants has submitted that the Respondent No. 1 company has not obtained a registration certificate under the Contract Labour Regulation & Abolition Act, and the Respondent No. 2 contractor has also not obtained the licence under the said Contract Labour Act. The Hon'ble Mr. Justice A. P. Shah and Hon'ble Mr. Justice A. M. Khanvilkar in their judgement in Writ Petition No. 3774 of 2000 delivered on 26th June 2001, reported in *2001 II CLR 1011 Bombay,* have settled down the law as follows :–

> "And in case, the principal employer engages contract labour in its establishment, without complaying the requirements of registration etc., then it would be presumed in law that the persons employed in such an establishment by the principal employer are its direct workers, unless it is shown that the work undertaken by them is not of perennial nature."

The evidence in examination in chief of the Respondent No. 1 company's witness Mr. Ravindranath Manik Tawde is silent about registration certificate of the Respondent No. 1 company, under the Contract Labour Regulation & Abolition Act. As regards the licence, under the said Contract Labour Act, he has specifically stated that he does not know as to whether the contract was registered under the said Contract Labour Act. Further, he has stated that he does not know as to whether the Respondent No. 1 company is registered for getting the mending work done from the contractor. Thus, the Respondent No. 1 company has not produce any evidance on record to show that it was registered and the Respondent No. 2 contractor had a licence under the said Contract Labour Act. As regards the nature of work, it appears from the evidence of Mrs. Sunita Gawde that she was not given work for certiain period. The evidence of the Respondent company's witness Mr. Ravindranath M. Tawde shows that the work was given to the contractor whenever the said work was available. These facts show that the work being given to the contractor was not a regular nature.

12. The learned advocate for the Cmplainants has submitted that the company's witness Mr. Ravindranath M. Tawde has admitted in his evidence that the workmen of the company and the workmen of the contractor were doing the similar work. It, therefore, appears that there was no such seperate process as specialised mending and ordinary mending. On this point, the evidence of the Respondent No. 1 company's witness Mr. Ravindranath M. Tawde shows that there were 2 mending sections in the company. Out of them, one was for specialized mending work, which was running by the Respondent No. 1 company. The workmen, who were regular/permanent workmen were working in the said specialized mending section. It was their work to match the fabrics, to insert the mending thread, to finish the fabrics etc. The work being done in the specialized mending section was skilled job. In other mending section, the workers were working under the contractor. They were doing the work of cutting of loose ends of fabrics and to remove stain on the fabrics with the help of chemicals. Thus, their job was unskilled job. His further evidence shows that the wages given to the workmen working in the specialized menting section and given to the unskilled workmen were not the same, as the nature of their work was not the same. The evidence of this witness shows that the work of the concerned workmen working under the contractor *i.e.* the Respondent No. 2 and the work of the regular/permanent workmen working in the specialized mending section was not the same. During the cross examination, he has stated that he can say the difference between the skilled mending and unskilled mending. According to him, the mending means removing the faults in the gray cloth and it is one of the process, removing faults, to cut ends, to match colour, gradation etc. Further, he has stated that the unskilled workmen submit their reports of work done by them and the skilled workmen also give the same type of report. Thus this witness has no where admitted that the nature of the work of the workmen working in the specialized mending section and the mending section or skilled or unskilled workmen is the same. He has only stated that the workmen in both the categories submit their reports in the same manner. The witness Mr. Francis C. K. examined by the Complainants has also admitted many things in his cross examination. He has admitted that there is one special mending dept. for mending work and the nature of work of the workmen working in the said department and the work of the workmen working in the mending department is different to some extent. Thus, it appears from the company's witness and the admissions of the Complainants witness that the work of both the categories was not the same.

13. On the point of maintainability of the present complaint, the learned representative for the Complainants has relied on the case of Rama Balu Kate *V/s*. Walchandnagar Industries & others reported in *1996 I LLJ 713 Bombay*. Wherein, it is held by Their Lordships that a complaint made by the workmen affected invoking items 5 and 9 of Sch. IV are maintainable. He has also relied on the case of Sakhar Kamgar Union *V/s*. Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Limited & Another, reported in *1995 I LLJ 134 Bombay*. Wherein, it is held by Their Lordship that the persons employed in sugar house, godown and delivery departments of the Co-operative Sugar Mill under contractors to do the work for them in execution of a contract with the mill owner are deemed to be "employees" within the meaning of Sec. 3(*13*) of the Bombay Industrial Relations Act and consequently fall within the definition of "employee" under Sec. 3(*5*) of the M.R.T.U. & P.U.L.P. Act. However, in the present case, it is admitted fact that the concerned workmen were working under the contractor and the principal employer has denied the relationship between it and the concerned workmen as the employer and employees. In such circumstances, this Court has no jurisdiction unless the status as workman is established in an appropriate forum, in view of the observations of the Hon'ble Supreme Court in the cases of Kalyani Steel Ltd. and Cipla Limited.

14. The learned representative for the Complainants has also relied on the case of Hindustan Coca Cola Bottling Pvt. Ltd. *V/s.* Narayan Rawat & Ors. reported in *2001 II CLR 380 Bombay*. On the facts involving dispute with regard to the relationship. Their Lordships gave directions to the Industrial Court to frame proper issue with regard to relationship and to decide the issue on the basis of the evidence and material adduced by the parties before it, by following the ratio of the judgements of the Hon'ble Supreme Court in the cases of Kalyani Steel Limited and Cipla Limited. Later on, the said decision was over-ruled by the decisions of the Hon'ble Division Bench of our Bombay High Court. The learned representative for the Complainants and the learned advocate for the Respondent No. 1 company has also admitted this fact.

15. From the above discussions, it appears that since the Respondent No. 1 company has disputed the relationship between it and the concerned workmen working under the contractor, *i.e.* the Respondent No. 2, this Court cannot entertain this complaint or inquiry into the same under the M.R.T.U. & P.U.L.P. Act, in view of the observations of the Hon'ble Supreme Court in the cases of Kalyani Steel Limited and Cipla Limited. Therefore, this Court has no jurisdiction to decide the Issue No. (1). If it is so, the Complainants cannot seek any reliefs. In the result, the Issues Nos. (1) and (2) are hereby decided accordingly.

16. With this, I proceed to pass following order :–

Order

Complaint (ULP) No. 236 of 1992 is hereby dismissed.

No order as to costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 21st October 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 14th November 2002.

———————

BEFORE SHRI V. P. ROTHE, MEMBER, INDUSTRIAL COURT, MAHARASHTRA, AT MUMBAI

REVISION APPLICATION (ULP) No. 20 of 2002.—T. N. Rajagopalan, B-6, Gokul Colony, Vithalwadi (E), Kalyan (East)—*Applicant—Versus*—(1) M/s. Air Conditioning Corporation Ltd., Elphinstone Bldg., 3rd floor, 10, Veer Nariman Road, Fort, Mumbai 400 001. (2) Hari Mahadeo Phadke, Branch Manager, Air Conditioning Corporation Ltd., Mumbai 400 001. (3) 4th Labour Court, Mumbai.—*Opponents.* and REVISION APPLICATION (ULP) No. 92 of 2002.— M/s. Air Conditioning Corporation Ltd., Mumbai 400 001.—*Applicant—Versus*—M/s. T. N. Rajgopalan.—*Opponent.*

In the matter of Revision Applications u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri V. P. Rothe, Member.

Appearances.— Shri J. M. D'silva, Ld. Counsel for the Workman,
Shri R. M. Joshi, Ld. Counsel for the Company.

Common oral Judgment

(Dated the 29th October 2002)

Both of these Revision Applications shall stand disposed of by this common order and judgment.

2. Being aggrieved by the judgment and order dated 1st December 2001 passed by the Labour Court, Mumbai in Complaint (ULP) No. 323/96, these Revision Applications are filed by both the parties to the complaint.

3. The facts in nut-shell are as under :–

The Complainant Shri T. N. Rajagopalan was working as an 'Accountant' with the Respondent Company *viz.* M/s. Air Conditioning Corporation Ltd. since 16th August 1993 and his service conditions are governed by the Certified Standing Orders. The Respondent No. 2 took over as branch Manager of the Respondent Company and thereafter, as per the accusations made in the complaint, the Complainant was harassed by him. The services of the Complainant came to be terminated on 3rd April 1996 without following the due process of law.

4. After filing of the complaint (ULP) No. 323/96, the matter came to be decided by the 4th Labour Court and the impugned order dated 1st December 2001 passed. As per this Order, complaint was partly allowed and it has been held that the Respondents are engaged in unfair labour practice under item 1(*a*), (*d*), (*f*) of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971. The services of the Complainant came to be reinstated without backwages, but with continuity of service. The Respondents were also directed to pay Rs. 2000 towards the cost of the complaint.

5. In the Revision Application (ULP) No. 20/2002, the Original Complainant is the Applicant. He challenged the impugned order for the limited purpose of the backwages. It is contended by the Complainant-Applicant that the service conditions of the Applicant were regulated by the certified Standing Orders. He was a permanent employee and was working on regular basis. When the Opponent No. 2 *i.e.* the Manager of the Company took over the charge of the Opponent No. 1 Company in May 1995, the Complainant was harassed by him. He was transferred to the Service Station from the Head-Office of the Opponent No. 1. A charge-sheet dated 11st April 1996 was issued to him. The explanation was offered by the Complainant on 15th April 1996. However, on 23rd April 1996 the services of the Complainant terminated. The reason for the same was that the Complainant had marked the copy of the reply to the charge-sheet to the Superior Officers.

6. It is contended on behalf of the Applicant that in the Written Statement then filed by the Opponent in the complaint the issue was raised that the Complainant is not a 'workman'. This issue came to be decided as a preliminary issue and it is held that the Complainant is a 'workman'. The Applicant is aggrived by the judgment to the limited extent of denial of backwages. Thus, the impugned order denying the backwages to the Applicant is a gross error of law and facts. The Ld. Judge though held that the Complainant is entitled to reinstatement with continuity of service, ought to have given the backwages to the Complainant workman. While tenying the backwages, the reason that has been given by the Ld. Judge is that "the Complainant has not stated anything about his employment after his dismissal from the services. He has simply stated that he be reinstated with full backwages w.e.f. 23rd April 1996. So also the Respondents have not adduced any evidence to show that the Complainant was gainfully employed after the termination. It is the duty of the Complainant first to show that he was not gainfully employed anywhere". Thus the Ld. Judge has erroneously cast the burden on the workman. The burden is on the employer to establish that the workman was gainfully employed and that can be the ground to be considered for denial of backwages if the burden is discharged. Thus there is a gross error of law in the impugned judgment and order under which the burden is cast on the employer first to show that he was not gainfully employed anywhere. Hence, the propriety and legality of the order of the Labour Court challenged by the Complainant and the Complainant has prayed to set aside the same to the extent of denial of backwages.

7. In the Revision Application (ULP) No. 92/2002, the aggrieved party *i.e.* Original Respondent No. 1. M/s. Air Conditioning Corporation Ltd. has challenged the impugned order of reinstatement with continuity of service on the following amongst other grounds :–

(*a*) The Ld. Trial Judge has committed error of law on the face of record.

(*b*) The Ld. Court has misguided itself while passing the impugned order. It erred in not appreciating the legal point that there is a termination of service of the Complainant by way of discharge simplicitor.

(*c*) The Ld. Trial Court has erred in not considering the Order passed by her Predecessor. It also erred in coming to the conclusion that when the inquiry is not conducted, it is not necessary for the Complainant to deny the charges levelled against him in the charge-sheet.

(*d*) The evidence has not been discussed by the Ld. Trial Court. Thus the evidence has not been properly appreciated and the decision of the Trial Court is erroneous.

(*e*) This order giving a premium to the Complainant and setting him free from the misconduct. The entire approach of the Trial Court is contrary to the natural jurisprudence. It is therefore prayed that the record and proceedings of Complaint (ULP) No. 323/96 be called and the said order dated 1st December 2001 be quashed and set aside.

8. With consent of both the parties, the Revision Applications are heard in common and disposed of by the common order. Written notes of arguments filed on behalf of the Applicant are taken on record of both the cases and I have heard Shri R. M. Joshi, Ld. Counsel for the Company. The following points arise for my determination :–

Points	*Findings*
(i) Whether the impugned order dtd. 1st December 2001 is perverse, illegal, contrary to law ?	Yes. (to the extent of non-gratning of backwages)
(ii) What order ?	As per order below.

Reasons

9. *Point No. 1.*—The Ld. Counsel of the Original Complainant has argued that the Applicant was working as an Accountant with the Respondents and the service conditions of the Applicant were regulated by the Certified Standing Orders and it has been rightly held by the Ld. Labour Court that the termination of services of the Complainant is illegal. However, the Ld. Labour Court failed to grant the backwages despite of granting the continuity of service and reinstatement. It is a gross error of law not to grant the backwages to the Complainant. The Ld. Counsel of the Applicant has further submitted that the grant of backwages is a normal rule consequent to the reinstatement. The departure from the same has to be justified by leading the evidence and attending circumstances. When it was held that the services of the Complainant were illegally terminated, why to deprive him of the backwages. The reasoning which was given by the Ld. Labour Court that it is the duty of the Complainant first to show that he was not gainfully employed anywhere is contrary to the set of facts and circumstances of this case. The Ld. Counsel is relying upon various judgments in support of his say. These judgments are reported in *1993 II CLR page 1008, 2000 II CLR 859, 1993 I CLR 244, 1992 I CLR 680* and forcefully submitted that the burden is on the employer to prove that the workman was in the gainful employment.

10. The Ld. Counsel of the Original Respondent Company and the Applicant of Revision Application (ULP) No. 92/2002 has submitted that the opportunity was not given to the Complainant for adducing the evidence, there were clashes in between the Branch Manager and the Complainant and because of these clashes, the services of the Complainant came to be terminated, is not the crux of the matter. The Complainant has suppressed the material fact of the showcause notices issued to him and the inquiry that was held against the Complainant. The Ld. Labour Court ought to have granted the permission to the Respondent Company to adduce the evidence to substantiate the charges in the chargesheet. Hence the Order passed by the Ld. Labour Court is not in accordance with law and the same deserves to be quashed and set aside.

11. The Ld. Labour Court has appreciated the evidence and came to the particular conclusion. To unturn the findings of the Labour Court, there is a limited scope in the revisional jurisdiction. Unless there is an error apparent and patent on the record, this Court would not interfere with the impugned order. After going through the record and proceedings of the complaint case, I find that there is no error of law while appreciating the evidence by the Ld. Labour Court, It is amply clear from the record that opportunity was given to the Company to adduce the evidence. The Company did adduce the evidence of 2 witnesses and thereafter the witness of the Company could not be completely cross-examined. Thus the Ld. Labour Court came to the proper conclusion so far as the relief of reinstatement and continuity of service granted by it.

12. There was a simplicitor termination of services of the Applicant. The right to fire is not given to the employer unlimitedly. The prescribed procedure of law is required to be followed by the employer while terminating the services of its employees. The Ld. Labour Court has rightly came to the conclusion that in this case, the termination is illegal it being the discharge simplicitor and such a course of eliminating an employee is not permissible under any law. The Ld. Counsel of the Company though making our a grievance that opportunity was not given to them to adduce the evidence, there is nothing on record to suggest that the Ld. Labour Court has ever prevented them from adducing any evidence. The process of the Court is not for making its abuse. It is for the Ld. Counsel to specify which witness they wanted to examine and when they were prevented by the Ld. Labour Court from examining that particular witness. The Company could not point out any such instance. For these reasons I find that there is no point in canvassing such submissions that opportunity was not given to the Company for leading the evidence in the Labour Court.

13. If the termination of services is accepted as retrenchment, then discharge simplicitor would also be covered by retrenchment and hence the concept of discharge simplicitor would become redundant. The Industrial Disputes Act very clearly recommends a distinction between retrenchment and discharge simplicitor. In discharge simplicitor, termination of service is brought about by the conduct of the workman and by the operation of the Standing Orders. For any termination of services, the reasons are to be recorded by the employer and the reasons normally are loss of confidence, etc. Mere writing of loss of confidence is of no use. It is for the employer to prove the fact and discharge the burden what prejudice has been caused to the employer and how the act can be termed as a loss of confidence.

14. In the instant case, the Ld. Labour Court though came to a conclusion that the Complainant-Applicant is entitled to get reinstatement, there was a deviation from the payment of backwages. If the termination order is held illegal, normally the employee would be entitled to all the reliefs as he was in service unless a case for exception is made out. There was a failure of employer to adduce evident about gainful employment. It is not necessary for the employee concerned to say that he was not gainfully employed. Even if it is presumed for the sake of argument (such is not the case with the present matter) that to save himself from starvation, the employee concerned had taken the job somewhere else, such a gainful employment will not have any effect in the payment of backwages. Considering the reasoning given by the Ld. Labour Court regarding the non-payment of backwages, I find that the Ld. Labour Court erred in non-grantting the backwages to the Complainant-Applicant. The Ld. Labour Court ought to have granted the backwages.

15. Mere contention of loss of confidence is of little use. It is necessary to diclose the ground of loss of confidence to the Court. From the complaint itself, it is very much clear that the Applicant-Complainant had simply insisted for the compliance of the provisions of the Income-Tax Act and the deduction at source. On account of the high-handed acts on the part of the Branch Manager of the Respondent No. 1, the Complainant's services came to be terminated. It is well-settled that termination for loss of confidence without writen order and not recording the resons as per the Standing Orders and also not placing on record nor was shown to the Court, are sufficient grounds to hold that such order is without jurisdiction and deserves to be set aside. In the present matter, termination of services of an employee without any inquiry is nothing but victimisation. For these reasons I find that there are no grounds to interfere with the finding of the Ld. Labour Court regarding the reinstatement and continuity of service. However, the Order of the Ld. Labour Court in refusal of backwages is required to be set aside by allowing the Revn. Appln. (ULP) No. 20/2002. To that extent, I modify the Order and answer the Point No. 1 accordingly and proceed to pass the following order :–

Order

(*i*) Revision Application (ULP) No. 20/2002 is hereby allowed.

(*ii*) Revision Application (ULP) No. 92/2002 is hereby dismissed.

(*iii*) The impugned order dated 1st December, 2001 is hereby modified as under :–

"Respondents are hereby directed to reinstate the Complainant with backwages and continuity of service."

(*iv*) No order as to cost in both the Revision Applications.

(*v*) R & P be sent back.

V. P. ROTHE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 29th October 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.

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महाराष्ट्र शासन

कामगार आयुक्त,

कॉमर्स सेंटर, ताडदेव, मुंबई ४०० ०३४.

दिनांक ५ डिसेंबर २००२.

क्रमांक औसं/औविअ/प्रसिद्धी/निवाडा/प्र-२०१ /२००२/कार्यासन ७.—ज्याअर्थी औद्योगिक विवाद अधिनियम, १९४७ च्या कलम ३९(ब)चे अंतर्गत प्रदान करण्यात आलेल्या शक्तीचा वापर करून महाराष्ट्र शासनाने आपल्या अधिसूचना क्रमांक औविअ/१०८०/ ५८/काम-२, दिनांक १६ डिसेंबर १९८० द्वारे असा निर्देश दिला आहे की, उक्त अधिनियमाच्या कलम १७(१) खाली शासनास वापरता येण्याजोगे अधिकार कामगार आयुक्त, महाराष्ट्र राज्य, मुंबई यांनाही वापरता येतील.

त्याअर्थी आता वरील नमूद केल्याप्रमाणे, औद्योगिक विवाद अधिनियम, १९४७ च्या कलम १७(१) च्या खालील शक्तींचा वापर करून कामगार आयुक्त, महाराष्ट्र राज्य, मुबई हे मे. हिन्दुस्थान लिव्हर लि., मुंबई व या आस्थापनेत काम करणारे यांचे औद्योगिक विवादाबाबत शासन आदेश क्र. सीएल/आयडीए/एफ १९७/मुंबई शहर, दिनांक ३ मे १९९७ च्या संदर्भात औद्योगिक न्यायालय, मुंबई यांनी दिलेला निवाडा क्र. ३९/९७ प्रसिद्ध करीत आहेत.

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